FILED
FEB 5 1987
JOSEPH F. SPANIOL, JR.
CLERK

(5) (5)

Nos. 85-1626 and 85-2010

IN THE

Supreme Court of the United States

OCTOBER TERM, 1986

CHARLES GOODMAN, *et al.*,
Petitioners,

v.

LUKENS STEEL COMPANY, *et al.*,
Respondents.

UNITED STEELWORKERS OF AMERICA,
AFL-CIO-CLC, *et al.*,
Petitioners,

v.

CHARLES GOODMAN, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

JOINT APPENDIX

(Volume I, Pp. 1-320)

WILLIAM H. EWING
ARNOLD P. BORISH
(Counsel of Record)
DANIEL SEGAL
HANGLEY CONNOLLY EPSTEIN
CHICCO FOXMAN & EWING
1429 Walnut Street, 14th Fl.
Philadelphia, PA 19102
(215) 864-7724
Attorneys for Charles Goodman, et al.

MICHAEL H. GOTTESMAN
(Counsel of Record)
ROBERT M. WEINBERG
JULIA PENNY CLARK
BREDHOFF & KAISER
1000 Connecticut Ave., N.W.
Washington, D.C. 20036
(202) 833-9340
Attorneys for United Steelworkers of America, AFL-CIO-CLC, et al.

PETITION FOR CERTIORARI IN NO. 85-1626 FILED APRIL 4, 1986
PETITION FOR CERTIORARI IN NO. 85-2010 FILED JUNE 6, 1986
CERTIORARI GRANTED IN BOTH CASES DECEMBER 1, 1986

326 pp

INDEX—Volume I

	Page
Relevant Docket Entries	1
District Court	1
Court of Appeals	4
Pretrial Pleadings	
Plaintiff's Complaint	7
Excerpts from Transcript of Proceedings in District Court	8
Testimony of Witnesses:	
Rev. Dr. Joshua Grove, II	8
Samuel Baxter	21
Rev. George Myers	27
Robert Lewis	30
Milton Baxter	32
James W. Mobley	34
Monroe W. Jones	37
Kenneth T. Young	39
Willie Stokes	46
Wallace Lee Perry	47
Lynn Greenberg	49
William A. Lambert	50
Charles Goodman	51
Samuel H. Brown, Jr.	52
Daniel London	52
James F. Worthy	56
Wilfred L. Mayfield	59
Paul Rice	64
John C. McNeil	65
Thomas Ryan	66
John Lewis Irwin	72
John Baxter	75
John Muhs	78
James L. Thompson	82
James L. Davis, Jr.	85
Leon Whitfield	89
William J. Whiteman	112
Norris Domangue	117
James A. Hall	128

INDEX—Volume I—Continued

	Page
Ramon Lee Middleton	134
William R. Mayo	137
Harold K. Brown	144
Michael Reach	148
Charles Witte	151
Earl J. Zitarelli	152
Oscar H. York	156
James H. Jones	158
Benjamin Pilotti	162
Hugh P. Carcella (testimony by deposition)	171
Anthony Gianotta	175
Albert Cooper	178
Lloyd Lawrence	190
Donald Y. Smith	204
Ben Elliott	206
Michael J. Keretzman	210
Charles Witte	212
Frank Mont	213
Thomas James	224
Dee Gilliam	227
Ernest C. Wills	238
Ronald Patton	240
James Jones	242
Carl Cannon	245
Earl J. Zitarelli	253
Richard Jacks	253
Elkin Kistner	256
Ben Fischer	258
Bernard Staub	274
George Ivan Barrage, Sr.	276
Benjamin Pilotti	279
Thelma Vaughn	284
Donald W. Smith	288
James Brewer	302
Joel C. Kennedy	304
Thomas Ryan	307
Michael Reach	314
Trial Stipulation Regarding Testimony of John J. Sheehan	315

INDEX—Volume II

	Page
Excerpts from Exhibits Admitted Into Evidence in the District Court	321
Plaintiff's Exhibit 15	321
Plaintiff's Exhibit 28	329
Plaintiff's Exhibit 29	331
Plaintiff's Exhibit 57	333
Plaintiff's Exhibit 60	335
Plaintiff's Exhibit 62	337
Plaintiff's Exhibit 65	344
Plaintiff's Exhibit 70	348
Plaintiff's Exhibit 87	352
Plaintiff's Exhibit 107	355
Plaintiff's Exhibit 164	358
Plaintiff's Exhibit 165	360
Plaintiff's Exhibit 166	367
Plaintiff's Exhibit 167	378
Plaintiff's Exhibit 168	380
Plaintiff's Exhibit 206	382
Plaintiff's Exhibit 400	385
Plaintiff's Exhibit 449	386
Plaintiff's Exhibit 653	392
Plaintiff's Exhibit 710	394
Plaintiff's Exhibit 711	398
Plaintiff's Exhibit 736	411
Plaintiff's Exhibit 739	415
Plaintiff's Exhibit 740	418
Plaintiff's Exhibit 744	422
Plaintiff's Exhibit 814	424
Plaintiff's Exhibit 847	427
Plaintiff's Exhibit 848	433
Plaintiff's Exhibit 879	438
Plaintiff's Exhibit 932	442
Plaintiff's Exhibit 947	444
Plaintiff's Exhibit 957	446
Plaintiff's Exhibit 961	451
Plaintiff's Exhibit 1045	455
Plaintiff's Exhibit 1046	456
Plaintiff's Exhibit 1047	458

INDEX—Volume II—Continued

	Page
Plaintiff's Exhibit 1048	461
Plaintiff's Exhibit 1216	462
Plaintiff's Exhibit 1326	465
Plaintiff's Exhibit 1328	466
Plaintiff's Exhibit 1338	480
Plaintiff's Exhibit 1368	482
Plaintiff's Exhibit 1369	483
Plaintiff's Exhibit 1400	484
Lukens' Exhibit 27	487
Lukens' Exhibit 40	488
Lukens' Exhibit 505	490
Lukens' Exhibit 509	491
Lukens' Exhibit 1806	498
Lukens' Exhibit 3050	502
Lukens' Exhibit 3050A	509
Lukens' Exhibit 3051	522
Lukens' Exhibit 3052	531
Lukens' Exhibit 3051	522
Lukens' Exhibit 3052	531
Union's Exhibit 57	532
Union's Exhibit 91	534
Union's Exhibit 135	536
Union's Exhibit 138	538
Union's Exhibit 140	545
Union's Exhibit 143	548
Union's Exhibit 144	552
Union's Exhibit 145	555
Union's Exhibit 146	560
Union's Exhibit 151	562
Union's Exhibit 157	575
Union's Exhibit 158	577
Union's Exhibit 232	578
Union's Exhibit 234	581
Union's Exhibit 235	583
Union's Exhibit 241	586
Union's Exhibit 245	592
Union's Exhibit 248	598
Union's Exhibit 261	604

INDEX—Volume II—Continued

	Page
Union's Exhibit 262	607
Union's Exhibit 263	609
Union's Exhibit 264	611
Union's Exhibit 266	615
Union's Exhibit 268	619
Union's Exhibit 276	622
Union's Exhibit 289	626
Union's Exhibit 302	630
Union's Exhibit 321	634
Union's Exhibit 322	638
Union's Exhibit 342	641
Union's Exhibit 344	646
Union's Exhibit 346	653
Union's Exhibit 357	655
Union's Exhibit 439	657
Union's Exhibit 442	659
Union's Exhibit 446	660
Union's Exhibit 472	677
Union's Exhibit 486	680
Union's Exhibit 489	682
Union's Exhibit 519	684
Union's Exhibit 533	687
Union's Exhibit 623	691
Union's Exhibit 627	693
Union's Exhibit 628	695
Union's Exhibit 629	698
Union's Exhibit 634	703
Union's Exhibit 655	706
Union's Exhibit 661	709
Union's Exhibit 664	711
Union's Exhibit 706	714
Union's Exhibit 750	716
Union's Exhibit 767	719
Union's Exhibit 1000	721
Excerpt from Defendant Unions' Proposed Findings of Fact	731

RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
District Court	
1973	
June 14	Complaint filed.
Aug. 13	Answer of United Steelworkers of America, AFL-CIO and its Local Unions 1165 and 2295, filed.
Aug. 15	Answer of Lukens Steel Co., filed.
Nov. 29	Plffs' motion for designation as a class action pursuant to Rule 23(b)(2) or, alternatively, Rule 23(b)(3), notice and certification of services, filed.
1974	
Feb. 8	Motion of Dock Meeks, David Dantzler, Jr., and John R. Hicks, III to intervene as plffs., Notice & Certification of Service of Motion, etc., filed.
1975	
June 17	Memorandum, Fullam, J. & Order dd. 6/16/75 that this action may be maintained as a class action pursuant to F.R.C.P. 23(b)(2), on behalf of a class consisting of all black persons who are, or who at any time on or after 6/14/67 have been, or who in the future may be, employed by deft. Lukens Steel Company. The Motion to Intervene as parties plff., filed by Dock Meeks, David Dantzler & John Hicks, III is GRANTED, filed.
June 17	Class Action Complaint in Support. Motion of Dock Meeks, David Dantzler & John Hicks, III filed.
1980	
Feb. 20	NON-JURY TRIAL (2/19/80) (Day #1) . . .
April 2	HEARING RE: Defts. Motions to Dismiss via Rule 41(b), - C.A.V., filed.

DATE	PROCEEDINGS
District Court	
1980	
April 7	TRIAL RESUMES . . .
Oct. 2	Transcripts of trial, First day (2/19/80) thru Thirty-Second day (6/21/80), filed. (36 Vols.)
1984	
Feb. 13	OPINION, FULLAM, J. & ORDER DD. 2/13/84 THAT JUDGMENT IS ENTERED IN FAVOR OF THE PLFF. CLASS & AGAINST ALL DEFTS., ON THE ISSUES OF LIABILITY SPECIFIED IN THE ACCOMPANYING OPINION. JUDGMENT IS ENTERED IN FAVOR OF THE NAMED PLFFS. CHARLES GOODMAN, LYMAN WINFIELD, ROMULUS JONES, RAMON MIDDLETON & DAVID DANTZLER, JR., & AGAINST THE DEFT., LUKENS STEEL COMPANY ONLY, ON LIABILITY, AS TO THE ISSUES SPECIFIED IN THE ACCOMPANYING OPINION. IN ALL OTHER RESPECTS, THE INDIVIDUAL CLAIMS OF THE NAMED PLFFS. ARE DISMISSED, FILED. (JF)
Aug. 6	MEMORANDUM, FULLAM, J. (DD. 8/2/84)/RE ENTRY OF THREE ORDERS: AN INJUNCTIVE ORDER DIRECTED TO DEFT LUKENS STEEL CO., AN INJUNCTIVE DECREE DIRECTED TO THE DEFT UNIONS, & AN ORDER WITH REGARD TO FURTHER PROCEEDINGS IN THE INTERIM; ETC., FILED.
Aug. 6	ORDER DD. 8/2/84 THAT DEFT LUKENS STEEL COMPANY IS ENJOINED FROM DISCRIMINATING AGAINST ITS BLACK EMPLOYEES, ETC., FILED. (JF)

DATE	PROCEEDINGS
District Court	
1984	
Aug. 6	ORDER DD. 8/2/84 THAT DEFT UNITED STEELWORKERS OF AMERICA & DEFTS LOCAL 1165 & LOCAL 2295 OF THE STEELWORKERS (DEFT. UNIONS) ARE ENJOINED FROM DISCRIMINATING AGAINST BLACK EMPLOYEES OF LUKENS STEEL COMPANY, ETC., FILED. (JF)
Aug. 6	ORDER DD. 8/3/84 THAT PLFFS' COUNSEL SHALL SUBMIT A PROPOSED FORM OF CLASS NOTICE FOR REVIEW & APPROVAL BY THIS COURT. THE DEFTS SHALL HAVE 5 DAYS AFTER SUCH SUBMISSION IN WHICH TO REGISTER THEIR OBJECTIONS & COMMENTS. PARTIES MAY APPLY TO ANY JUDGE OR MAGISTRATE OF THIS COURT TO CONDUCT SETTLEMENT DISCUSSIONS & NEGOTIATIONS, ETC. PARTIES DIRECTED TO PROCEED THAT ALL MATTERS NOT THEN DISPOSED OF WILL BE RESOLVED AT A TRIAL, NOW TENTATIVELY SCHEDULED FOR MID-JANUARY 1985, FILED. (JF)
Aug. 15	United Steelworkers of America, AFL-CIO-CLC and its Local Unions 1165 and 2295's Notice of Appeal, filed. (U.S.C.A. No. 84-1478).
Aug. 30	Deft. Lukens Steel Co's notice of appeal, filed. (U.S.C.A. 84-1509).
1985	
Feb. 19	ORDER DD. 2/15/85 REGARDING CLASS NOTICE & PROOF-OF-CLAIM PROCEDURES, FILED. 2/19/85 entered & copies mailed.

DATE	PROCEEDINGS
District Court	
1986	
July 17	JOINT MOTION FOR ORDER REGARDING TENTATIVE APPROVAL OF PROPOSED SETTLEMENT [between Lukens Steel & plaintiffs], RULE 23(e) NOTICE TO CLASS, FILING OF OBJECTIONS AND HEARING ON PROPOSED SETTLEMENT, CERT. OF SERVICE, FILED.
July 17	ORDER DATED 7/17/86. FULLAM, J., THAT UPON CONSIDERATION OF THE JOINT MOTION A HEARING IS HEREBY SCHEDULED FOR 10:00 A.M. ON OCTOBER 6, 1986 IN COURTROOM 15A AT WHICH TIME THE COURT WILL HEAR ARGUMENT AND RECEIVE EVIDENCE IN ORDR TO DETERMINE WHETHER THE PROPOSED SETTLEMENT IS FAIR, REASONABLE AND ADEQUATE AND TO CONSIDER WHETHER THE PROPOSED CONSENT DECREE SHOULD BE FINALLY APPROVED, FILED.
Oct. 7	Hearing dated 10/6/86 re: Proposed Settlement . . . .
Court of Appeals	
1984	
Aug. 15	Notice of Appeal filed in No. 84-1478
Aug. 30	Notice of Appeal filed in No. 84-1509
Sept. 18	Jt. Mot. by applts and applees to consolidate appeals at 84-1478 and 84-1509 for all purposes . . .
Oct. 11	Order (*Weis*, Garth, C.J.) granting above motion . . . .
1985	
June 11	ARGUED.

DATE	PROCEEDINGS
Court of Appeals	
1985	
Nov. 13	JUDGMENT - The judgments of D.C. are vacated insofar as the findings that Lukens discriminated in transfers to salary positions and tolerance of racial harassment and cause remanded to D.C. for further consideration in light of this Court's ruling on the appropriate statute of limitations for the § 1981 claims. The D.C.'s finding in favor of the class with respect to initial assignments will be vacated and cause remanded for reconsideration in light of this Court's ruling on class representation. On remand the limitations period pertaining to the Title VII claims against the unions shall be adjusted in acc. w/the opin. of this Court. The finding of discrimination in the denial of incentive pay for the pit crew is reversed and it is directed that on remand the judgment be entered for the defendant on that claim. All of the above in acc. w/the opin. of this Court, filed.
Nov. 22	Order (Weis, Garth & Stapleton, C.Js.) amending opin., filed.
Nov. 27	Petition for rehearing of United Steelworkers, filed.
Nov. 27	Petition for rehearing of Charles Goodman, et al., before the Court in banc, filed.
1986	
Jan. 7	Petition for rehearing of United Steelworkers, DENIED by panel.
Jan. 7	Order (Aldisert, Ch. J., Seitz, Adams, Gibbons, Hunter, *Weis, Garth,* Higginbothan, Sloviter, Becker, Stapleton & Mansmann, C.Js.) denying the petition for rehearing in banc. Judge Gibbons would grant rehearing in banc. Judges Garth and Becker would grant rehearing in banc only with respect to

DATE	PROCEEDINGS
Court of Appeals	
1986	
	the statute of limitations issue, together with separate statement sur denial of petition for rehearing by Judge Garth, filed.
Jan. 7	Motion by Lukens Steel Co. for stay of mandate to and including Feb. 11, 1986, w/serv., filed.
Jan. 9	Order (Weis, C.J.) granting stay of mandate to and including Feb. 11, 1986, filed.
Jan. 27	Motion by Lukens Steel Co. to stay the mandate to and including April 7, 1986, pending disposition of pet. for certiorari, w/serv. filed.
Feb. 3	Order (Weis, C.J.) granting further stay of mandate to and including April 7, 1986, filed.
April —	Notice of Filing of the Petition for Certiorari on April 4, 1986, at S.C. No. 85-1626, filed.
April 14	Notice of Filing of the Petition for Certiorari on April 7, 1986, at S.C. No. 85-1645, filed.
June 13	Notice of Filing of the Petition for Certiorari on June 6, 1986, S.C. No. 85-2010, filed.

PLAINTIFFS' COMPLAINT

[Title Omitted in Printing]

* * * *

49. Defendant labor organizations, contrary to the provisions of Title VII, have failed to fairly represent plaintiffs and the class they represent by:

a. Failing to fairly and adequately process grievances on behalf of black employees.

b. Negotiating and entering into collective bargaining agreements which have the intent and effect of denying blacks equal opportunity for promotion.

c. Failing to represent black persons effectively by passively permitting the employer to discriminate against black persons because of their race and color.

d. Failing to act affirmatively to cause the employer to refrain from discriminating against black employees because of their race and color.

* * * *

51. The practices of defendant labor organizations more fully described above deny plaintiffs and the class they represent their rights under Title VII of the Civil Rights Act of 1964 and the same rights to make and enforce employment contracts as are enjoyed by white citizens of the United States, in violation of the Civil Rights Act of 1866, 42 U.S.C. Section 1981.

* * * *

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS IN DISTRICT COURT

[Page references in official transcript appear in brackets with each excerpt.]

* * * *

[1-25] REV. DR. JOSHUA GROVE, II, sworn.

DIRECT EXAMINATION

BY MR. EWING:

Q Dr. Grove, would you state your present employment, please?

A Pastor of the Pleasant Grove Baptist Church, Philadelphia, 3909 Lancaster Avenue, Philadelphia.

Q When did you work at Lukens Steel company?

A I begun July, 1951 and concluded in 1971, January.

* * * *

[1-33] Q Did there come a time when you made a complaint to either the company officials or to the unions about locker rooms?

A Yes.

Q Could you tell us when that occurred?

A That was—it must have started in '59 but it really got on paper in '62.

Q What was the nature of your complaint?

A My complaint was that the practices of assigning blacks to one shower room and the whites to another and especially the difference in the condition was unfair and it was illegal.

[1-34] Q What was the difference in condition?

A Number one, it was crowded in there like sardines in a can and there was times that the waterbugs or whatever you call them was so large you was afraid to go in there with your shoes on.

Q Is that the black locker room you are speaking of?
A Yes.
Q And what was—had you ever seen the white locker room?
A Yes.
Q What was that like?
A Much better, much better. I wanted to find out to make sure either they both was the same or there was a difference. So I went in there and when I walked in there strangely enough the janitor threatened to throw me out. I just walked in to look around and I did that several times and there was a vast difference between the two.
Q Would you tell us what company officials you complained to and what was—what conversation you had with each of them?
A I started off with the fellows in the shop with me trying to get their feeling because I knew if I eventually get this done I would have to move in with them to see what the attitude was and—I found no indication among any of them that they were favorable towards either helping me to get this change or didn't care too much about me coming in there. I [1-35] went to the foreman. I discussed it with him and he told me—I think he said that was not his responsibility to assign.

But anyway, I went to Mr. Richard Swagger, that is his name, he was in charge. I went to his office. I sat down and I talked it over with him. Mr. Swagger informed me that he worked for Lukens Steel Company and whatever their policy was it was his job to carry it out.

I went to Mr. William Whiteman, who was his supervisor and I had a time getting an invitation to see him but I finally saw him. We sat down and I explained to him what my complaint was. His first reaction was that we have had—we have had health men to inspect all of these facilities and they gave us their okay that they was

all right. But however, he did agree to make an observation to see if something had happened between the time they made the last inspection and I was in his office.

So I said, okay. And at the time I was supposed to go back, I went back and I never got past Ms. Frances Hall. I never got past her.

Q Who is she?

A I am not sure whether she was his receptionist or secretary. Whatever she was I never got past her on the issue. After that I went to see Mr. Harry Martin and relaid the issue on his desk. He said, number one, he did not think it was as bad as I said it was. First he told me Mr. Whiteman had [1-36] indicated I had been to his office on this issue. And then he said, "I don't think they are that bad and first of all, we do not assign them on a segregated basis. We assign them in the department according to where they work." And I was shocked. I said, "Now, these other white fellows work in the same department that I work. I did not select to go in that hole." One of the security guards carried me there and assigned me, the person that was there, gave me a key and a locker. Yet he told me "we don't assign them that way." And I raised the question. If this is so then either all of the guys that work in my shop should be in my shower room or all of them should be in one of the other ones. But the company was responsible for assigning them. So he agreed also to make an observation and he says, "Okay, you come back and see me in a few days." I said, "Well, let's make a schedule. Tell me what day and what time to come back and I will come back."

So I did. I went back and faithfully he said, "I want to tell you that some of the places are as bad as you say they are and here is what we are going to do. We are going to begin to move, close up some of them, we are going to move some of them around." I waited a short

span of time and I didn't see any movement, I didn't see any movement. But while we was in there discussing this, it might have been the second time I went back to see him, and I said, "Now, Mr. Martin, this is a discriminatory practice. It is wrong. It [1-37] is illegal and you don't realize what you are doing to us as a group of people." He said, "Mr. Grove, I want to tell you something. You make me feel very bad. I have just filed a report with the Defense Department, Government contracts, I am very proud of this report." I remember telling Mr. Martin, "You falsified that report." He said, "You are making an accusation." I said, "No, I am not making an accusation, I am making a charge. You falsified that report. I am prepared to prove it. You want to write it down, notarize and I will sign it. I am prepared to prove it. If you want to carry it out on this basis or we will file charges to have it done." I think we set a date. Anyway, when I left his office I went home, I typed the charges up and I waited until a specific day and I had talked to—in the meantime, I talked to a Mr. Joseph Foy, who was working across—he was the union president I believe, 1962, across the street from where I was working. I talked to him. He said he will talk to him about it. The first time I told him he said Mr. Whiteman said get me off of his back and I explained to him, to make a long story short, "Mr. Foy, I have the charges all typed up. I have the letter already addressed. I have a stamp on it and if you do not get some kind of commitment from them by 5:00 o'clock today I will file these charges by dropping it in the mail" and that is what I done. I dropped it in the mail and filed the charges.

[1-38] Q Who is Mr. Foy?

A President of the local union, Joseph Foy, I believe his first name was.

Q And who is Mr. Morton?

A Mr. Martin, I think he was the personel manager, Harry Martin was his name.

* * * *

[1-41] Q To your knowledge, did the company take any action on your complaint before you filed the charges?

A Before, no.

Q Did you complain to anybody else besides Mr. Foy who was the union official?

THE COURT: Anybody else who was a union official he wants to know.

THE WITNESS: I am trying to think.

(Pause.)

THE WITNESS: Well, I know definitely, definitely Mr. Foy and I discussed it several, several times.

BY MR. EWING:

Q Do you know whether Mr. Foy took any action?

A No, not to my knowledge but as I say, he told me he [1-42] would talk with him and he said he did. Now, I did not see him talk with him. Even on the last day he said, "Hold off, hold off and let me talk to them again before we get into filing charges. Maybe, maybe they would go this route by knowing that something needs to be done, there are some complaints."

One of the other things when I pressured him, I remember now, I pressured him about let's start some place and resolve this and he raised this question: "If I had any idea what the repercussion would be after being separated so long, if you bring these fellows together, what would the repercussion be?" That was the question he raised. I said to him, "I don't think there will be any repercussion because normally we do what we have to do."

Q Did you ask him to explain what he meant by the repercussions?

A I wanted to be sure about what he meant about repercussion. I had an idea. I said, "What do you mean by repercussion?" He said, "The anger, the anger this will stir up between the blacks and whites."

Now, he was aware of the complaint being made because things gets around fast. He said, "I am aware, I am aware this has been passed around that you are doing this" and he raised a question that I had an idea what repercussion would occur.

[1-43] Q Did he give any suggestion that he had any idea what repercussions would occur?

A Well, the only thing he said specifically was "Be cause you bring a group like this together, if they are angry and they have been separated all these years, you bring them together it could be like some kind of explosion." I took what he said, he thought there would be fighting and carrying on, or maybe a race riot, this kind of thing, which I didn't think would happen and it didn't happen.

Q Did he make any statement as to whether he would do anything about it?

A No, no, because that was understood that the company had control of this assignment. He did tell me on two occasions and the last day that "I will go back and talk to them again."

* * * *

[1-53] Q Did you discuss these complaints that you mentioned regarding job assignment and so on with union officials?

A I discussed that with every union official, every union member I could get to listen to me.

Q And what complaint did you take to them?

A The whole bag.

Q I don't know whether the bag is clear or not.

A When I say the whole bag, I mean beginning with the [1-54] hiring, the upgrading and the whole works. I would explain them too, explain this to them.

Q With whom?

A The officials.

Q The hiring and upgrading of whom?

A Of blacks.

Q Who did you talk to that was a union official?

A Well, every one of the presidents from Mike Reach to Lloyd Lawrence.

Q Who else was in there?

A In there?

Q Who was in between?

A Well, there was Mike Reach, Albert Cooper, Joe Foy, Frank Pilotti, Lloyd Lawrence and Harry "Koloof".

* * * *

[1-55] Q Dr. Grove, you mentioned that you had complained to presidents of the union that you named regarding certain practices. Did you complain about them to any other union officials?

A Yes.

Q Who were they?

A One fellow in particular, Mr., I think his name was Malcolm Detterline.

THE COURT: Can you spell that name for the record?

MR. EWING: D-e-t-t-e-r-l-i-n-e.

THE COURT: Thank you.

BY MR. EWING:

Q Any others?

A Malcolm Detterline and it was Ben Pilotti, we discussed this frequently and it was—one of them has since passed. There was another one.

[1-55a] Q Who was that?

A I am trying to think.

THE COURT: Who is the one who is no longer with us?

THE WITNESS: Charlie Wischuk.

BY MR. EWING:

Q What was the response that you received from these union officials?

A Ben Pilotti, it took me quite a while, I am not sure whether I ever fully convinced him, that there was such a thing as discrimination. As he stated to me, he had been in Coatesville X number of years. This is the way the practice was. They more or less accepted it as being a standard thing. As far as there being discrimination, why it was doing to the black people that I tried to explain to him it was doing and how it had the strangle hold on them. Each time he would come into our shop, he was a Pipefitter, some kind of mechanic, he was working on the machine. And we discussed this quite frequently. But he never give me any indication that he would really put forth any effort to try to help me bring about any change.

But Mr. Detterline, I am sorry that he is not here alive to hear me say this. He said something to me that was very important. He said there are some things you have to do for yourself and if you really expect to get this [1-56] job done you are going to have to do it, take your chances. If you win, okay. If you get canned, okay. But you got canned for something that you believed in.

Q The various union presidents that you talked with, what action did they say they would take, if any?

A I don't think I ever got—no, I didn't. I never got a commitment from no president of the union or anybody else that I raised the question about discrimination

to, that they would take any specific action. I can't even remember a person positively agreeing with me that we had the kind of in-depth problem existing among us at the present time—I am not talking something about 20 or 40 years ago, I am talking about up until the time that I left Lukens Steel Company, even until this day.

Q Did you discuss these problems with any black officials of the unions?

A I did.

Q Who did you talk with?

A I discussed it with Mr. Greenlee over a period of years, both inside the mill and outside of the mill. I used to go by his shop and discuss it with him.

Q Is that Vernon Greenlee?

A Vernon Greenlee. I discussed it with him. Quite frequently I discussed it with him.

Q Anybody else?

[1-57] A Mr. Whitaker. Mr. Whitaker, we discussed it, Mr. James Brown, long before he was president.

Q And what response did you receive from those three gentlemen?

A Mr. Greenlee at the first outset, he began telling me about some of the token advancements that had been made by the Negro, including himself, some of the token advancements. And he told me about putting on pressure in these areas and he said that he had applied pressure where it related to a fellow getting into the Crane Department and shortly after that he went out of office. He did tell me how long it was after. That was Mr. Greenlee.

But Isaac Whitaker, we didn't do too much discussion because his attitude towards it, he was very allusive and he was not going to get involved in anything that would mar his chances of moving up, or mar his chances of operating in the position where he was.

MR. LANDIS: Objection.

MS. CLARK: Objection, Your Honor, that is the witness' opinion only.

THE COURT: Yes, it is. Objection sustained.

BY MR. EWING:

Q What did Mr. Greenlee say specifically, if you can recall—Mr. Whitaker, I am sorry?

[1-58] A As I said, this is what he said. Mr. Whitaker said that he was not going to get involved in that type of thing. Specifically when I spoke to him about discrimination in the different departments and I asked him, I said, "You are in position now, aren't you going to try to do something, maybe loosen things up so guys can move up?" He told me he wasn't going to get involved in anything like that would create a problem for him.

Q How about Mr. Brown?

A Well, Mr. Brown, when he came to power that was after—he was in power as vice president—the last time I talked to him just before he passed. We were in a council meeting. We didn't have too much time to talk. But I talked to him about three times in a short span at a conference and that is the last time I mentioned to him about that. He said, "Well, you know, I got my hands full. I am doing a lot of things in the union proper and also in the council and I really got my hands full." I said, "What are you doing specifically on the item that we discussed across the years," wherever we met? We had no specific place to discuss discrimination and segregation at Lukens Steel Company as related to the Negroes. I still did not get the clear commitment from him as to what he intended to do or what he was doing.

* * * *

[1-77] CROSS-EXAMINATION

BY MR. LANDIS:

Q So the last time you worked in Lukens was December 6, 1969?

A December 26th.

Q December 26th. That is all. Thanks.

* * * *

[1-80] Q The gripe that you expressed to union leaders about that incident when you were asking them to do something was that any kind of seniority was used. Isn't that correct?

A I don't think I understand you.

THE COURT: What did you complain to the union about concerning that item?

THE WITNESS: As far as seniority is concerned?

THE COURT: Right.

THE WITNESS: Oh, my complaint was that the way it was set up the deck was stacked and we need to find some way of switching it around.

BY MS. CLARK:

Q Some way other than seniority?

A Well, it could be a combination, not necessarily. I didn't give any definite plans how you do it but just do it some way, let's come up with some other way.

Q Something other than straight seniority?

A Other than straight seniority.

Q The complaints that you made to union officers which [1-81] you described that you made over and over and over again during your time at the company, you in fact were making a very specific demand to all of those people, weren't you?

A No, I wasn't in a position to make demands.

Q You were asking them specifically to negotiate for a program, weren't you, in which jobs would be posted for all employees to know what jobs were open and so that blacks could get openings, so exceptions could be

made in seniority so blacks could move up in openings involving senior whites; is that correct?

A I think you are asking me three questions, ask me one at a time.

THE COURT: So do I.

THE WITNESS: Ask one at a time.

THE COURT: Which of those things did you ask them to do?

THE WITNESS: Which one?

BY MS. CLARK:

Q You did ask them about posting; isn't that correct?

A Yes, sir, that is right.

Q You asked them to negotiate a system in which seniority would not be followed in filling vacancies but something different would be used so that blacks could move up ahead of senior whites; isn't that correct?

A I stated before I did not give a clear request on what [1-82] kind of a seniority. That could be worked out but there had to be some kind of a system to make it fair.

Q Mr. Grove, you recall being deposed in this case, don't you? Do you recall my taking your deposition testimony?

A Yes.

Q And do you recall being asked, and I am referring to deposition transcript Page 43, "Did you consider or was it your idea that blacks should be given some kind of preference in promotions or simply that the company would be agreeing that it would promote in a non-discriminatory fashion?" And your answer: "There is two parts to that. I will have to give you the answer to that in two parts. Number one, by virtue of the fact that there was such a bulk of them who had been denied the opportunity, you are going to have to work out some system to give them a fair share of employment."

"Q Some system other than seniority, I take it?
"A That's right."

Do you recall being asked those questions and giving those answers at your deposition?

A Maybe you misinterpreted the meaning from my answer.

Q Do you recall being asked those questions and giving those answers?

A I did.

Q Thank you, Mr. Grove.

Are you aware in fact that the union had [1-83] proposed and did propose a system of job posting at Lukens Steel?

A I am now aware.

Q And are you aware that the company and the union agreed to put a non-discrimination clause in the contract?

A I heard something about that.

Q And as a Shop Steward with the responsibility for enforcing the union contract, you, of course, knew it was a basic principle of the union that seniority should be used to fill job vacancies, didn't you?

A Will you restate that question?

THE COURT: Try to shorten the question.

THE WITNESS: Yes, shorten it.

BY MS. CLARK:

Q You knew, didn't you, that it was a basic principle of the union that seniority should be used to fill job vacancies?

A I did answer that question, in that deposition you asked me a question similar to that and I told you as far as the things on the books, even the ones we have, there was no problem with them but implementation is the problem.

Q Mr. Grove, I think you haven't answered my question.

A Maybe you didn't get the answer that I asked.

Q The question I asked you, were you not aware it is an expressed principle of the union that job vacancies should be filled on the basis of seniority?

[1-84] A I answered that question before. I told you.

THE COURT: Would you answer it now and do it quickly? Were you aware that the union stuck up for seniority?

THE WITNESS: Oh, yes.

* * * *

[1-85] Q Your account of your conversations with Mr. Foy, he in fact told you that he has spoken to the company to see if he had agreed what they were proposing; isn't that right?

A Yes.

Q And he came back and reporting to you that the company would not agree at that time; isn't that correct?

A Right.

Q And he told you his position was it would take some time to make these changes; isn't that also right?

A Yes.

Q And Mr. Foy, of course, is dead so he can't come in here and testify about his version of the conversation, can he?

A That is right.

* * * *

[1-101] SAMUEL BAXTER, sworn.

DIRECT EXAMINATION

BY MS. GARTRELL:

Q Mr. Baxter, are you presently employed?

A No, I am retired.

Q When did you retire?

A In '78, in 1978.

Q 1978?

A Around March.

Q For what period of time were you employed by Lukens Steel Company?

A Oh, first, 1951 and I quit and I came back in 1953 until 1978.

* * * *

[1-111] Q When did you finally get in the Miscellaneous Weld Shop, Mr. Baxter?

A I think it was '63, if I am not mistaken. It was in 1967.

* * * *

[1-119] Q After you got into Miscellaneous Weld, did you experience any scheduling problems which you considered to be related to your race?

A Well, the Foreman had a right to schedule and he had to schedule—the other department called in for a Welder like the Pipefitters, they would call in for a Welder. If the Foreman had to schedule the next day where he should send this Welder and that Welder.

Now, the mills are awfully greasy. Working with electric furnaces is awfully dirty. Well, you would end up being in the mills or Electric Furnace. Some Welders which she shouldn't have been because I don't remember these jobs posted, one Welder went to that job at all times. His bonus system was higher on that job because I think the only department in Mechanical Maintenance that work those plates, material. By sending them on customer work, bonus was always higher. So we were all in the same job class but our Job Class 16, and I am Job Class 16 and the other fellow, he could still make more money by the Foreman sending him on a higher bonus job where at the West Side electric bonus is higher this quarter they would send a white. I probably end up rigging for Pipefitters or anything like that. It was two of us mostly went [1-120] to the Pipe Shop, George Bussey and myself. He might weld on the pipe and when they send him out in the field and George make 10 and I make 2. And the——

Q Did you or any black Welders complain about the scheduling of jobs within the unit, the scheduling that you just described?

A Yes, I talked at this time, I think, Ben Pilotti. And he told me what did your Foreman ask you to do. I says, well, he said what is your job description. I says, well, he is not doing anything out of your job description, the way he sending me on the job, the best man for the best job.

Q Did you complain to Mr. Pilotti you were being discriminated against your race and not being asked to do something besides weld?

A He said prove it.

Q Did any other black employee in the Miscellaneous Weld Subdivision complain about this kind of scheduling?

A Yes, they did but it was just like they said when the union or the company had got together and gave the Foreman the privilege to schedule you on these jobs, the Foreman has a right to schedule, it was nothing you could do. The Foreman could use the same law to punish you and still within the law of the company.

* * * *

[1-128] Q Now, did you ever complain to union representatives or officials about race discrimination at Lukens?

A Yes, I complained a lot of times but I never complained directly by official papers, just by talking at different times.

Q Who did you talk to?

A I know I talk to Witte when I first went to Lukenweld. The blacks were always sent—given jobs doing carbon steel, dirty steel, they had stainless steel mixed in at this time. But all whites worked on the stainless steel and nearly all blacks in the cleaning. And the first black that ever—that started welding stainless steel was Henry Jackson, although all of us was in the same job classification.

Q Who was Mr. Witte?

A He had something to do with the union. In fact, I didn't know about the union anyhow.

Q Was Lukenweld a separate union from Lukens?

A Yes, it was separate.

Q That was still true as of the time you left; is that right?

A Yes.

Q When you worked at Lukenweld, were you a member of the Lukenweld union?

A Yes, I was.

[1-129] Q Was Charlie Witte an official of that union?

A Yes, he was.

Q What did Mr. Witte respond to you when you complained to him?

A I think he said something about that is the way they are supposed to be. I am not sure. Anyhow, it was something smart. If you want to know the truth about the company and the union, catch them by themselves and talk to them. Whatever is in their mind, that is what they will come out their mouth. They will never say that in front of a witness.

Q Did Mr. Witte say that to you in private?

A Yes.

Q Did you understand him to mean by that blacks deserved——

MS. CLARK: Objection, that is a leading question.

THE COURT: Objection overruled, it certainly is and it certainly speeds things up.

THE WITNESS: Yes.

BY MS. GARTREL:

Q Mr. Baxter, did you complain to any officials of the Lukens' union?

A Oh, yes, I complained.

Q Because you were a member of that union as well?

A Yes.

[1-130] Q Who did you complain to?

A I called to Cavuto, Ben Pilotti and him and I used to have—practically every other weekend I ended working with Benny, every other Sunday working in the office. We was talking over union things, how hard we had it years ago and when we lived out on the avenue together, we had it hard. He is president of the union and I am still here in this grease. He told me, he said, "Sam, Ben comes first." That is what he told me. Benny comes first.

Q Do you remember what Mr. Cavuto said to you when you complained to him about discrimination against black employees?

A It came out this way. He asked me, "What is your job description?" And I told him what my job description is. "That is what you are supposed to do, what your job description calls for." Wherever the Foreman sends us, wherever they put us on that is where we are supposed to go.

* * * *

[2-14] Q Now, with reference to the problem you discussed about scheduling Welders on jobs that pay higher incentives versus jobs you were scheduled on, Mr. Hess' scheduling, when you spoke to Mr. Pilotti about that, in fact, what he told you was the union couldn't do anything about that.

A He said the Foreman have the right to schedule.

Q And didn't he tell you that the union had tried to change that practice and had not been able to?

A No, he never did tell me that.

Q And he didn't tell you that the union had in fact gone to arbitration on that issue and had lost the case?

A No, he didn't tell me that.

Q And when you mentioned to him that you thought it was race discrimination, in fact, what he told you was that if you wanted to file a grievance on discrimination you have to be in a position to prove it?

A He told me discrimination was hard to prove and I asked [2-15] him was that the reason——

Q I am sorry, I didn't understand the last part of your answer.

A What I am trying to say is this: The union would always back up the company with what you call "our hands are tied with the grievance." If anything is wrong, do it whether it is safe or not, do it and follow the grievance. And those issues would be settled right there.

Q You follow instructions from your Foreman, if you think there is a problem then you are supposed to grieve about it later on?

A If the Foreman give you a job which is in your job class, you know he is railroading you and you know you can't prove it, they tell you go home, take the day off and file a grievance and come to union and fight. Two or three years fighting the same case over and over again.

Q On this scheduling problem Mr. Pilotti told you discrimination was a hard thing to prove?

A Yes, he did.

Q You told him blacks had been scheduled on this [higher] incentive job that you wanted, Mr. Hess did schedule blacks on that job?

A It was like this. When a fellow go on vacation somebody had to fill in for them. A lot of those jobs was like, what we will call cales job, in other words, we are welding for an [2-16] outside company. If a fellow goes on vacation a lot of those other fellows couldn't do some of those jobs. They have to send the best man they can to replace those fellows.

Q When that would happen they would send blacks over?

A Not necessarily blacks. That would be the only chance he would get to weld on some of those jobs, somebody off on vacation. I could do it on vacation but when they was in the place I couldn't do it.

One day I was "A" Class Welder and tomorrow I wasn't anything.

Q Now, with reference to the other black men in the Miscellaneous Weld Shop, you testified a moment ago

that Mr. Hess did in fact schedule them on the higher incentive work.

A The blacks?

Q Yes. You said that a moment ago, didn't you?

A In fact, what I was saying, you would hit it every now and then but it wasn't consistent.

* * * *

[2-18] REV. GEORGE MYERS, affirmed.

DIRECT EXAMINATION

BY MS. GARTRELL:

Q Rev. Myers, where are you presently employed? Are you presently employed?

A No, ma'am. I am on pension from Lukens Steel Company.

Q When were you last employed?

[2-19] A Last of March, 1972 I was pensioned off from Lukens.

Q How many years had you worked at Lukens at that time?

A 45.

Q What job did you hold at Lukens for most of that time?

A Supervisor, Night Supervisor or General Foreman, Night Foreman.

* * * *

Q When did you first become a Foreman at Lukens?

A In the early '40's.

* * * *

[2-28] Q When you first went to Lukens, were there jobs that were held only by whites and jobs that were held only by blacks?

A Yes, ma'am, most all of them.

Q Could you tell us those jobs which were held only by blacks?

[2-29] A Shearing Department where they cut plates; Labor Department and its construction; the Mill where they clean debris, that would be Labor, too; Road Crews for oiling the roads, keep the dust down, we didn't have hardtop roads then; Stocking Gangs, where you shovel lime, jobs like that.

Q Did you know anything about the Open Hearth Pit and Floor area?

A Yes, ma'am, the Open Hearth Pit had a few colored in it, a few.

MR. SILBERMAN: I am sorry, I didn't hear that, Your Honor.

THE COURT: A few colored in it.

MR. SILBERMAN: Thank you.

BY MS. GARTRELL:

Q Did you say the pits or the floor?

A A few colored.

Q The pits or floor?

A The pits had a few colored in it. The floor didn't have any. The pits had a few colored in it. It was Italian or foreign and colored in it but there were more foreigners in there than they were colored.

Q Did you work in the area near where the Track Gang worked?

A I worked all around there, in all areas where they worked.

[2-30] Q Did you have some familiarity with the Conductors and the Engineers?

A Yes, ma'am.

* * * *

[2-42] Q Rev. Myers, at any time before you left Lukens Steel Company in 1972, did you ever see any evidence that the company was attempting to bring about equal job opportunity for black employees?

A I didn't, not visibly, I didn't.

Q Did you ever see any evidence that the union was attempting to bring about equal job opportunity for blacks at Lukens?

A No, no.

* * * *

[2-43] CROSS-EXAMINATION

BY MR. SILBERMAN:

Q Rev. Myers, when you came to Lukens there was no seniority system; is that correct?

A As such.

* * * *

[2-46] Q You do know when you were at Lukens there was a seniority system; is that correct?

A As such.

Q And that seniority system was governed by rules that were in the collective bargaining agreement; is that correct?

A That was what?

Q Was set up by rules in a collective bargaining agreement; is that correct?

A This I disagree with.

Q You do know that the union and the company sat down and negotiated seniority rules together; is that correct?

[2-47] A This I don't know.

THE COURT: How would he know that? He wasn't there.

THE WITNESS: I don't know that. You are asking me something I don't know.

THE COURT: Is it your general impression that the union did negotiate an agreement which covered seniority?

THE WITNESS: Contract-wise you are talking about?

THE COURT: That is right.

THE WITNESS: Yes, Your Honor.

THE COURT: Okay, that is all he is trying to get you to agree to.

THE WITNESS: Okay.

BY MR. SILBERMAN:

Q Am I correct to say that occurred in the early 1940's as far as you are aware?

A I am not aware when it took place because I wasn't interested in it.

* * * *

[2-53] BY MR. SILBERMAN:

Q When the union was first organized at Lukens Steel Company, blacks and whites joined the union together; is that correct?

[2-54] A Sir, I don't know anything about Lukens Company and the union and what they done. I was not a union man. I was a company salaried man. I was not interested in what the union done and what the Lukens done. Clean off the record, I don't know anything about them.

* * * *

[2-57] ROBERT LEWIS, sworn.

DIRECT EXAMINATION

* * * *

What is your age, Mr. Lewis?

A 70.

Q How many years did you work for Lukens Steel Company?

A 46 years—46 years and 7 weeks.

Q When did you retire?

A 1972. I haven't worked since '72 because vacation come [2-58] in between there.

Q And you officially retired in '73?

A Yes.

Q What was your job when you retired?

A Locomotive Engineer.

Q And prior to that what was your job at Lukens?

A Conductor.

Q Were you one of the first black Engineers at Lukens?

A Yes. I was the third on a Narrow [Gauge], the third Engineer on the Narrow [Gauge] and the first on the [Broad Gauge].

Q When you became a Conductor at Lukens, were there any black Engineers at that time?

A No.

Q Did you make some effort to change that so that blacks could become Engineers?

A I asked for a job back in '28 and the man that was running the Locomotive Department told me that there was no jobs for me under his supervision. I will make it plaint to you. The Conductors were working under Copeland and the Engineers was working under M. D. Parker. Naturally I asked him for a chance at the job, Parker, and he told me that he didn't have any job for me.

Q Did he tell you why?

A No. He didn't go no further because he knew that I really wanted the job, I would take it.

[2-59] And in '44 I went on the Narrow [Gauge] Engine and I was the third black man to go on the Narrow [Gauge] Engine.

Q What did you have to do to get that job?

A What did I have to do, well, I was conducting already and I had put a great many years in there and I understood everything. I went through the procedure that the company asked for and I made out and I worked there until '58 and then I went on the [broad] gauge.

* * * *

[2-67] Q Now, inside the plant at Lukens, what were race relations like over the time that you were employed there?

A Well, inside the plant and out of sight the workmens got along together, they got along good. But if you are not [2-68] sure of yourself, you can't trust them.

Q Were you aware at any time of any efforts made by the union to improve the race relations in the plant in any respect, to integrate facilities or to integrate jobs or job groups?

A No.

* * * *

[2-71] CROSS-EXAMINATION

* * * *

Q Mr. Lewis, are you aware that in the 1940's the union negotiated an agreement that would provide for the Engineers' job to be filled by Conductors?

MR. EWING: Objection.

THE WITNESS: 1940?

MR. EWING: Objection, Your Honor.

THE COURT: Objection overruled.

(Pause.)

THE WITNESS: In the 1940's?

BY MS. CLARK:

Q Yes. Are you aware of such an agreement?

A What is your question?

Q Are you aware of an agreement that the union [2-72] negotiated that Engineers' jobs vacancies would be filled from the men in the Conductor Division?

A No. We had a man from Pittsburg to come down to straighten that out and about 20 days after that a black man went on the engine at Lukens.

Q Was that the first black man to go on the engine?

A Yes, Jesse Gaines.

Q That man from Pittsburg, was he from the International Union?

A Yes, he was down there. And he made it possible for what you are talking about.

Q Are you also aware of the union negotiating transfer rights for all employees at Lukens?

A Pardon me?

Q Are you aware that the union negotiated an agreement that employees could use their seniority to transfer from the subdivision where they were to some other place in the plant?

A Yes.

* * * *

[2-164] MILTON BAXTER, sworn.

DIRECT EXAMINATION

* * * *

[2-179] Q Let's look at another request for transfer dated June 17, 1968. It states that the job requested was Carpenter.

Let me ask you, Mr. Baxter, why were you filing all of these requests for transfer?

A I was trying to better myself. What I really wanted was to get in the trades and crafts. But I tried a couple of salaried jobs, I didn't get those, what I really wanted was to get into the trades and crafts.

Q Let's go back to P-419, when you requested transfer to the Carpenter's unit. There is a letter attached to Exhibit P-419 to you dated July 9, 1968.

Do you recall what the response was to the request for transfer to the Carpenter's Shop?

A I got a letter in the mail. Now, it wasn't this letter here but I got a letter in the mail saying I wasn't qualified.

Q Anybody ever tell you what the qualifications were?

A No.

Q What was the racial composition of the seniority unit in which the Carpenter's job was located back in 1968?

[2-180] A It was an all white shop.

Q Did you complain to any union official about this request for transfer being denied?

A I talked to "Yi" Brown.

Q Who is "Yi" Brown?

A At this time "Yi"Brown was my Shop Steward, my Committeeman.

Q Is Mr. Brown deceased today?

A Yes, he is deceased.

Q Is Mr. Brown black?

A Yes.

Q What happened after you complained to Mr. Brown?

A Jim told me that he would check into it.

Q What happened after that?

A Several days later he told me, he said, "Milt, there is nothing that can be done about it."

Q Did he tell you why?

A He said, "They are not hiring blacks in that department."

* * * *

[3-25] JAMES W. MOBLEY, sworn.

DIRECT EXAMINATION

BY MR. BORISH:

Q Rev. Mobley, I have handed you several exhibits which I will ask you to refer to during the course of your testimony. By whom are you presently employed?

A Lukens Steel Company.

Q When did you first go to work for Lukens?

A October 16, 1950.

* * * *

[3-29] A Yes. I have a bad history of high blood pressure. Since I had just come out of the hospital and had been cleared for the first day to come back to work and when I had gotten cleared to come back to work, I was scheduled as a Grinder.

Q What job had you held before you went out sick?

A I was a Stretcher Operator. May I explain it?

Q Yes.

A I was a Stretcher Operator before I—the operation of the Stretcher operates two turns, 8:00 to 4:00 and 12:00 to 8:00. By me being the younger men, if the Stretcher goes down to one turn I automatically should come back to Material Handler. When I came back from the hospital the Stretcher was on one turn.

Q So what job should you have been——

A I should have been a Material Handler.

Q And you said you were scheduled to grind?

A That is right. The schedule said to be a Grinder.

Q What did you do about that?

A I went—I tried to see about it to get it changed.

Q Who did you see?

A I went to see the supervisor.

Q Can you explain the circumstances and what happened?

A Yes, sir, I did.

Q Can you explain now what happened?

A Can I explain what happened?

[3-30] Q Yes.

A Yes, sir. I walked up and looked at the schedule and alongside of me there was another white man which was a Shop Steward.

Q What was his name?

A Don Smith.

Q Continue, please.

A He also was scheduled to grind. He was very upset about him being scheduled to grind and he said openly he wasn't going to grind. He said, "I will change this." He left the floor and left me standing by the schedule, went into the office, and got his scheduled changed.

Q Was he more senior than you in the Cladding unit?

A No, sir. I had 25 years more time than he did.

Q What did you do?

A When he came back out he said, "I told you I wasn't going to grind." Well, I figured, I was 25 years his senior, maybe it was a chance for me to get mine changed. I went to see the same supervisor, Robert Roussey, he told me he wouldn't change it, couldn't change it, I had to grind for at least a week, which I did.

Q What did you do then?

A I came back out of the shop and walked over to Don Smith. I said, "Well, Don, you are the union representative. Is there anything you can do for me?" He just looked at me [3-31] and walked away.

Q What job class is a Grinder, was a Grider at this time?

A I am almost certain it is 5.

Q What job class was the job you felt you should have had?

A 8.

Q Did you complain to any other union personnel about this problem?

A Yes, I talked to another union Shop Steward by the name of Roy Bracken.

Q What was the response?

A None. The only thing he said, he said, "Jim, this isn't right," and that is all he said.

Q Now, when did this incident occur?

A This happened late '70's.

Q Have you known any white employees who have come back off of sick leave and gone back on to the job that they had left?

A Yes, I do.

Q Who are they?

A One was Harry Franciscus. He left a Layer Out, he came back a Layer Out.

Q Any others that you know of?

A One named Harry Barish, another Layer Out. He went [3-32] out a Layer Out and came back a Layer Out.

Q Any others that you know?

A Yes. Harvey Feaster is a Layer Out.

* * * *

[3-46] Q Go ahead and explain it.

A Now, when you say problems, when a Turn Foreman works with a group of men, he does not treat—he does not approach all men alike. All men aren't the same. To me—to Johnny I was a man that would not retaliate by cursing him and flaring back up at him. So therefore, how he treated me was differently from another man that would curse him back when he went into his tempers and throwing his hat around and tramping down, naturally he would approach him.

When you say problems, I mean the way that he [3-47] and I got along. There were other things that John Rissell did racially to other men that was different from the way he treated me because I was a different man. If John Rissell thought that another man would curse him out and be to him just what he was to another man, he approached and worked with that man differently. But the racial motivation was there.

Q Did you complain to any supervisor about this? Did you take it to his boss about this that you say was wrong with him?

(Pause.)

A No more than the union.

Q You complained—did you complain to Labor Relations about the way Mr. Rissell was treating you, the racial motivation that you said he had?

A No, sir, I didn't. I did not.

Q You didn't take it to Labor Relations? You didn't take it to his boss either; is that right?

A No, sir. The union knew it.

* * * *

[3-54] MONROE W. JONES, sworn.

* * * *

[3-60] Q And what was the standard practice or the rules for Helpers in order to advance to the next job category?

A You went in as a Helper. You worked 1,040 hours. Then you took a written test and some field work to pass the third class

Q And did you have to work 1,040 hours before you took the written test?

A Yes, I did.

Q Now, when you took a third class test, did you pass it?

A Yes, I did.

Q What was the next step up and how did you get there?

A Then you worked 1,040 more hours. You take another test and I took it and I failed it.

Q What did you do after that?

A I worked 1,040 more hours.

Q Then you were allowed to retake the test?

A Retake the test.

Q And what happened that time?

A Well, they had two other Painters up for a second class test.

Q What happened to you at that time?

A When I took it, I passed it.

Q And did you subsequently take the test for First Class Painter?

[3-61] A After 1,040 more hours.

Q And did you pass that?

A Yes.

Q Did you ever receive any help with regard to any of those tests, what to expect on them and how to prepare for them?

A No, I didn't.

Q Are you aware of any other employees having received help on tests?

A Yes, I do.

Q Could you tell me about that?

A Well, there was two other fellows up for second class test the same time I was. And the Foreman, the day we were supposed to take the test the Foreman had them up in the shop tutoring them on the test.

Q What were their names?

A James Anderson and I think the other fellow's name was James McPeak.

Q Did you make any complaint about that?

A Yes, I went to Ben Pilotti. I told him I wanted to file a grievance. And he said, "What kind?" I said, "Discriminating." I told him what happened. He said he will take care of it. So a week went by and I went back to him and I asked him if he filed it and he said, "You know I can't do that" and just walked away from me.

* * * *

[3-63] Q Are all those people, Mr. Anderson, Mr. McPeak, Mr. Boninu, Mr. Bolinger, are they white or black?

A They are white.

Q Are you aware of any black people having received any help on tests at Lukens?

A None at all.

Q At any time?

A No.

* * * *

[3-68] Q How long was it after you had taken the test for second class and passed it that you spoke to Mr. Pilotti about the Foremen tutoring the other employees?

A That happened before I took the test.

Q But on direct I thought you said that you saw them tutoring that very same morning that you had taken the test?

[3-69] A That was before I took the test. We all took the test the same day.

When I saw—when they was up in the office I went out the shop and Pilotti was out there.

Q So you saw him immediately?

(Pause.)

A Yes.

Q And in fact, he went with you to the supervisor and complained about that, didn't he?

A No, he did not.

Q Didn't he go with you to the supervisor and make it clear that the union said if anyone got tutoring everyone should get it?

A I couldn't tell you. He never took me nowhere.

Q You passed the test when you took it, right?

A The second time, yes.

Q And you didn't lose any pay or any benefits as a result of the tutoring of the other employees; is that correct?

A That is correct.

* * * *

[3-71] KENNETH T. YOUNG, sworn.

* * * *

DIRECT EXAMINATION

BY MR. EWING:

Q Mr. Young, do you work at Lukens Steel Company?

A Yes, I do.

Q What job do you have there?

A Crane Operator.

Q When did you first go to work at Lukens?

A 1965, approximately June or July.

* * * *

[3-75] Q I would like you to look at Exhibit P-589. In 1969, after you went back there to work, did you apply to transfer to other jobs?

A Yes, I did.

Q What jobs did you apply to transfer to?

A Inspection Department, Millwrights, Metallurgical Testing.

Q Did the Employment Office or anybody else, any other Lukens' officials give you any response to those applications?

A Well, right off they offered me a Crane Operator's job. I refused it. I told them I didn't want to be a Crane Operator. They told me I would have to take a test for the other jobs.

Q Did you take a test?

A Yes, I did.

Q What was the nature of that test, do you recall?

A Basically the same written test, math questions.

Q True-false?

A Yes, I suppose so.

Q After you took the test did they tell you anything [3-76] about whether you could get the other jobs you had applied for?

A Pilotti told me I didn't pass the test. The guys said I had been working midnight and probably tired. He asked me if I had been reading lately.

Q Did they say anything about the tests that you had taken before and the test that you took now or your results were similar or different?

A Yes, he told me when I came out of high school I scored extremely high on the test and I asked him why I scored so high on the test why did I wind up a Grinder. He said he didn't know. He didn't work there at the time.

Q So after he gave you the test and told you you had done poorly, what happened after that?

A Well, he suggested I should come back in a week or so and take the test again.

Q Did you do that?

A Yes, I did.

Q What did he tell you about that?

A He told me I didn't pass the test again but they needed Crane Operators and I could be a Crane Operator if I wanted to.

* * * *

[3-81] Q When you went there in 1972 to the loading banks, were there any other black employees working on the loading banks?

A Not on my particular job, no.

Q Did you suffer any racial harassment during that time?

A Yes. I received a lot of static from the members of the crew.

Q Do you remember a man named Harold Trythall?

A Yes.

Q What was his position?

[3-82] A He was a Checker or a Shipper if you wish to call him that.

Q Did you have any incidents with him?

A Over a period of years we had several incidents.

Q Tell me about that?

A Well, like I said, we had several incidents. He became angry and called me a black sheep one day. Well, things just got back and forth where we couldn't get along at all.

Q Did you make any complaints to anybody about that?

A I eventually did.

Q To whom?

A I contacted NAACP after we had a confrontation in the mill in front of a large audience with the Crane Foreman and Harold and myself. I was informed about 20 minutes before the Crane Department showed up that they were going to come down and supposedly give me a good tongue lashing for, I guess, being at odds with Harold. So far as I knew the entire shop knew about it except for me. He showed up. It was quite an audience more or less waiting, hanging around. He began to—I think Harris was the Crane Foreman and who showed up and he began to reprimand me. We argued back and

forth and got into it pretty hot and heavy. He informed me he was giving me a verbal—giving Harold and I both a verbal warning and I asked him how could he give Harold a verbal warning when Harold wasn't in his department, he had no jurisdiction over [3-83] him. He said well, he was giving me one anyway. I said, "What you are doing is reprimanding me and not him." He says, "I am giving you one anyway." We argued some more and I became angry and walked away from him. Before that he informed me after informing me of my verbal warning, he informed me Harold Trythall would be watching me, Bill Valinsky would, Dunphy, who was the Shop Steward more or less set things up for Harold to go to the Crane Department complained about me.

MS. CLARK: Objection, Your Honor, unless a foundation is laid about his knowledge about Dunphy.

THE COURT: The objection is sustained unless it is established.

THE WITNESS: Well, Nancy Smith told me that Dunphy made the statement. "Kenny Young doesn't like the job working with Harold. Do you think I could get rid of him?"

BY MR. EWING:

Q Who was Nancy Smith?

A She had a job as Carman.

Q Was Dunphy there when you had this encounter with Mr. Trythall?

A And the Crane Foreman.

Q Yes.

A Yes. He was standing in the background.

[3-84] Q Did he participate at all?

A No.

Q Did he make any attempt to defend your interests?

A No, he didn't.

Q Was this before or after you went to the NAACP?

A Was the confrontation before or after?

Q Right.

A It was before.

Q What was the final resolution of the matter if there was one?

A Well, the Crane Foreman instructed me they would be watching me and if I could possibly get time off from work or lose my job, that is when I went to the NAACP because I felt my job was threatened.

THE COURT: He wants to know what happened thereafter?

THE WITNESS: Well, they set up a meeting. Harold was at the meeting, myself, Bill Whiteman who was Labor Relations.

BY MR. EWING:

Q I don't think we need the details of the meeting if you can tell me what came out of the meeting.

THE COURT: Were you fired or promoted or——

THE WITNESS: They put us on a different shift.

[3-85] THE COURT: When did all this happen about?

THE WITNESS: What year?

THE COURT: Yes.

THE WITNESS: Possibly around '75, I think. I am not sure.

THE COURT: Thank you.

BY MR. EWING:

Q While you were working on the 120 Inch Mill loading banks, right?

A Yes.

Q You started there in 1972?

A Yes.

Q Now, since that time have you had any problems or even before then with respect to overtime?

A Yes, I did.

Q What was that problem?

A Well, Jim Reese, well, he was Turn Foreman of the 120 loading banks. I, myself and Earl Riggins were the only two Crane Operators on that particular job. Into the periods when they had—the end of the periods, the fourth week when they do most of their shipping, they

had five, six or seven overtimes for the week and they would give Earl say four out of five and give me the remaining one.

Q Did you make any complaint about that?

A Yes. I talked to Jim Reese, the Foreman, several [3-86] times about it. He simply said, "Okay, we will take care of you." Bue he never did.

Q Did you speak to the union about it?

A Yes. I went to see George Barrage about it about three or four different times over a period of a couple of years and Barrage talked to the Crane Office about it and he talked to Jim Reese about it and they said they would straighten it out and they would for a short period of time and they would go right back to their old ways.

Q Did you subsequently file a grievance?

A Barrage warned them if they did it again I would file a grievance and a discrimination complaint. They did it again and we filed a grievance and a complaint.

Q Was the grievance and the complaint filed at the same time?

A Why yes. I went to the Union Hall to see Tom James. Barrage sent me to see Tom James to fill out a discrimination complaint. He said I would fill out a grievance first, "That way you would be entitled to your Crane Office overtime records." So I signed two blank forms at that time.

Q And do you know whether they were both filed at the same time?

A No. He said we would file the grievance first and if we didn't feel we received any justification from the grievance then we would file the discrimination complaint which we did.

[3-87] Q When was the grievance filed, do you recall?

A In '78, I think.

Q Did that result in a satisfactory outcome?

A No, not really.

THE COURT: Find out what did happen. Was there any adjustment made?

THE WITNESS: No, there wasn't.

BY MR. EWING:

Q Was there even a temporary improvement or some kind of improvement?

A Well, they did bring things up so far as overtime is concerned, even for the time being they have.

Q Was that overtime then given on the same crane or was there some problem about which cranes?

A Well, prior to my grievance and discrimination complaint I had to move around the company to get overtime where Earl received majority of overtime on our crane.

Q On the same crane?

A Yes.

Q Was there any reason why one was more desirable than the other?

A Why he never came right out and told me?

Q From your point of view?

A Yes.

THE COURT: You prefer doing it on your own [3-88] crane?

THE WITNESS: Yes, I would.

BY MR. EWING:

Q Was the discrimination complaint then filed?

A Yes, it was.

Q That was a complaint with the union, was it?

A Yes.

Q And when was that filed, do you recall?

A Probably a year after I filed the grievance.

Q That would be like the summer of '79?

A Yes.

Q Was that finally—was the matter finally resolved?

A Well, to a certain point it was due to the fact that from the time the grievance—I signed the blank form and the grievance was actually written up, it was written up instead of occurring over a period of years, it was written up occurring.

Q My question is: After the discrimination complaint was filed last summer now things are working right from your point of view, whether—

A It seemed to be going pretty even right now for the time being.

* * * *

[3-90] Q Mr. Wolbach and the two Messers. Boninu, are they white?

A Yes, they are.

Q How about Mr. Gay?

A Yes, he is white also.

Q Mr. McBride?

A Yes.

Q Trythall?

[3-91] A Yes.

Q Riggins that was on the crane, your crane on the other shift?

A Yes.

Q Mr. Dunphy, the Shop Steward?

A Yes, he is white also.

Q And who was your Foreman there, Mr. Reese?

A Yes, he is white, too.

* * * *

[3-97] BY MR. EWING:

Q Mr. Young, did you have a problem with the way that the union filled out your grievance with regard to the overtime?

A Yes. I attempted to say earlier from the time I signed the blank forms until the time the grievance was filled out my complaint was they weren't giving me the fair amount of overtime over a period of years. Unfortunately it was written up simply for one week during the year of '79. And that caused me to pretty much complain.

* * * *

[3-157] WILLIE STOKES, sworn.

DIRECT EXAMINATION

BY MS. GARTRELL:

Q Mr. Stokes, are you presently employed?

A No, I am retired.

Q When did you retire?
A 1977.
Q Did you work at Lukens prior to that time?
A I did.
Q What years did you work at Lukens?
A I started 1945.

* * * *

[3-186] Q When you went to Lukens in 1945, were the facilities in the plant such as locker rooms, lunchrooms and so forth, segregated by race?
A They were.
Q Do you know of anything that the union did throughout your years at Lukens to integrate those facilities?
A No, I don't.

* * * *

[3-194] WALLACE LEE PERRY, sworn.

DIRECT EXAMINATION

BY MR. BORISH:

Q Mr. Perry, by whom are you employed?
A Lukens Steel Company.

* * * *

Q Mr. Perry, when did you first go to work for Lukens?
A September 23, 1953.
Q I will first ask you, have you been employed by Lukens continuously from 1953 until today?
A Yes, I have.

* * * *

[3-201] Q Did you have any other problems with respect to layoffs that involved the pool?
A Yes. The time that I got laid off, it was five of us got laid off at the time.
Q Who were those five people, you and four others and who were they?
A Lester Davis.

Q What race is Mr. Davis?
A He is black.
Q What were the three others?
A R. McWilliams, white; Jimmy Canel, white; and McWilliams.
THE COURT: You gave us that one.
THE WITNESS: Eddie Williams.

BY MR. BORISH:

Q What race were those last three?
A Three white.
Q Now, all five of you were laid off from the same [3-202] seniority unit?
A Yes.
Q What seniority unit was that?
A Out of the Hot Top.
Q And where were the three whites sent?
A Two were sent to 26 Heating and one was sent to West Side to Tally.
Q Now, are those both seniority units?
A Yes.
Q Those were not pool jobs, were they?
A No, they was out of the pool.
Q And where were you and Mr. Davis sent?
A I was sent to 120 Scrap Hole, Shears.
Q Was that a pool job?
A Yes.
Q And where was Mr. Davis sent?
A 26 Labor.
Q What was the racial composition—was that a pool job also, 26 Labor?
A Yes.
Q What was the racial composition of the 206 Labor job?
A The 26, 100 percent black.
THE COURT: When did that happen, that layoff?
THE WITNESS: That was—that was after the [3-203] pool. That was around '63, '64.
THE COURT: Thank you.

BY MR. BORISH:

Q In terms of company seniority, how did you and Mr. Davis compare to the three white employees?

A I was the oldest and Lester Davis was the second oldest.

Q Where are those three white employees today?

A Still there.

Q Still where?

A The two are still in 26 and the one is a Foreman now, Eddie Williams.

Q They didn't come back to the Hot Top?

A No.

Q Did you complain?

A Yes.

Q What did you complain?

A I went to the union, it was the senior men who got laid off was supposed to get a place out of the pool if possible.

Q Senior men in terms of what?

A Oldest men being laid off.

Q In company time?

A Yes. He says, "That is not the way it is supposed to be. I will look into it."

[3-204] Q Did you ever hear anything further about it?

A No.

* * * *

[4-3] LYNN GREENBERG, sworn.

DIRECT EXAMINATION

Q Ms. Greenberg, are you a legal assistant in the office of Goodman and Ewing?

A Yes, I am.

* * * *

[4-14] BY MR. EWING:

Q This past December 13th, did you visit the office of Union Local 1165 in Coatesville for the purpose of examining and copying documents?

A Yes, I did.

Q Did the union provide transportation for you from there to the train station?

A Yes, they did.

Q Do you know who it was who took you?

A A union official referred to as Maldy.

Q Did you have any conversation with him?

A Yes, I did. He said to me when I got on his truck, "How can you stand all those blacks in Philadelphia?"

* * * *

[5-4] WILLIAM A. LAMBERT, sworn.

DIRECT EXAMINATION

* * * *

[5-20] Q About how many times were you laid off during the time period that you were a First Class Assembler?

A In my stay I guess maybe 14 times.

Q And where were you laid off to generally?

A Most of the time to the Labor, Miscellaneous Labor.

Q Do you know about how many times you were laid off to Miscellaneous Labor in the 14 times?

A About a dozen.

Q About a dozen. What job class did you go to?

A It is a 2 or 3.

Q Do you know of any other Assemblers who were assigned to the Labor Gang on layoffs?

A In my stay at Lukenweld, no.

Q Did you ever complain to the union about this?

[5-21] A Oh, yes.

Q Who did you complain to?

A Well, when we were notified, usually we are notified you would be laid off near the end of the week and I would talk to the union guys either—whichever one was in my department and usually it was John McGallen on our turn.

Q What was Mr. McGallen's response when you complained to him?

A McGallen would say, "Well, Bill, you are the highest paid colored guy in Lukenweld." He said, "Now,

you know there is only a couple jobs that colored guys can go to when you go into the big mill."

Q When you moved over into the big mill in the labor pool—

A Yes.

Q —did you talk to any Shop Stewards or union officials there about your situation?

A Yes, in the Labor Gang. We had John Robinson, Sr., who was a Shop Steward and I talked to him also. And he told me the same thing. He said, "Well, Bill, there is only a few jobs for colored guys when they come up here that they can take." This was it, the labor pool.

Q Mr. Lambert, did you ever complain to the union officials about the seniority system at Lukens?

A I talked to Shop Stewards.

[5-22] Q Did you ever talk to John McGallen about it?

A Oh, yes.

Q What was the nature of your complaint to Mr. McGallen?

A I asked him why it was that we had to go, guys that had a trade had to go up and get in the labor pool. Couldn't they do something about it. He said nothing he could do about it.

* * * *

[5-118] CHARLES GOODMAN, sworn.

* * * *

[5-170] Q Now, you don't know of any white employees who received better representation from the union than you did?

A Yes, a lot of them.

Q You don't remember the name of any single white employee?

A I couldn't give you the name because it has been a long time ago. But you can see, if you work there you can know what was going on.

* * * *

[5-174] SAMUEL H. BROWN, JR., sworn.

DIRECT EXAMINATION

BY MR. EWING:

Q You work for Lukens Steel Company now?
A Yes, I do.
Q When did you start there?
A July 2, 1957.

* * * *

[5-190] Q Now, you mentioned that Cornelius Thorpe had said to make sure your seniority gets straightened out. Was there a problem with your seniority?
[5-191] A Yes, there was.

Q Looking at Exhibit P-654, and comparing it with Exhibit P-655, is there a change there and if so, what and how did it come about?

A Yes. I went to my Shop Steward and told him that the seniority posting was wrong.

Q Why was it wrong?

A Because I was supposed to be behind Horace Lowery.

Q You said these people, Miller and others were put in there before you; isn't that right?

A Yes.

Q Who said you should be behind Horace Lowery?

A Well, that is the way it was over at the Employment Office.

Q That is what they told you?

A Clarence Wirth, he showed me Horace Lowery was first, I was second and Jack Miller was third.

Q Did you ultimately get that straightened out?
A Yes, I did.
Q How did that come about?

A I saw my Shop Steward and he filed a grievance for me.

* * * *

[6-27] DANIEL LONDON, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SEGAL:

Q Mr. London, are you currently employed at the Lukens Steel Company?

A Yes, I am.

* * * *

Q When did you start at Lukens Steel Company?

A 1966.

* * * *

[6.28] Q Mr. London, focusing on the period in late February of 1975, what job were you occupying at that time?

A I was a handyman in the Locomotive Department.

Q In that period, were you working with a man by the name of Leon Bemenick?

A Yes, I was.

Q Was he white or black?

A He's white.

Q What job were you doing with him?

A We were working on a service truck, which consists of doing repairs on railroad cars in the field, rather than take them to the shop and tie up railroad cars; a little minor job.

Q How were you and Mr. Bemenick getting the tools with which you did that job?

A Well, I worked with him for a couple of weeks and I was always accustomed to him, and in the morning [6.29] I would go to the railroad yard where the major work is done and pick up tools needed to do a job. And then from there, going to do our jobs on specific railroad cars.

Q Who did you pick the tools up from?

A Paul Taylor.

Q Were they Mr. Taylor's tools?

A No, they're company tools.

Q Did Mr. Taylor see you when you and Mr. Bemenick got the tools?

A Yes, every morning.

Q Focusing now on—more specifically on March 3, 1975, did you follow this same pattern?

A Basically, but the only change there was the foreman, Lou Kornet, came to me that day and told me that Leon Bemenick was going to work at the rail yard with Paul Taylor, himself, and that I was to work on the service truck by myself.

Q What did you do then after he told you that?

A So I just took it for granted from past practices of the last two or three weeks that I was to go to the rail yard, collect the tools that I needed and go on the job.

Q And did you do that?

A Yes, I did. I went to the rail yard, but I [6.30] didn't get the tools.

Q What happened?

A Well, Paul Taylor denied me the tools.

Q What did he say?

A He said they are his tools and I couldn't use them.

Q What did you do then?

A I questioned him about it. I told him that I thought that they were company tools and that I'm normally doing what I had seen Bemenick do and heard that other guys did—went to the rail yard, collected the tools that were needed and so I'm doing the same thing and I asked him, why is he giving me the—he became very nasty in his attitude and I knew that I had just gotten into this department and the potential of a good paying job, and I didn't want to ruin my chances of losing this job.

So I just left and went around and was looking for cars that I would see that probably needed work on, later on, once I found some tools. So I rode around until coffeebreak time and I went back and had a cup of coffee.

After I came out of the coffee room, the foreman, Lou Kornet, came to me and told me that there was a change in the schedule again and I was [6.31] to go to Electric Furnace again instead of riding the service truck.

Q Did you ask Mr. Kornet at this time what his impression was as to the rule, as to whose tools they were and whether you would have access to the tools?

A Yes, I did because I was still a little confused as to what the story was to be on the tools, so I asked him just exactly whose tools they were and what tools I was supposed to use, and he said they were Lukens' tools and he asked me why.

I told him why. That I was denied the use of the tools from Paul Taylor. So he told me, well, just forget about it and go on down to the Electric Furnace. And he assigned a guy by the name of Sam Law to take me down, and when we got into the truck, I asked Sam Law to take me back up to the rail yard so that I could let Taylor know that I know that the tools aren't specifically his and that they belong to, you know, the company in general.

And I wanted to know just why, you know, he wouldn't allow me to use the tools that I knew everybody else was using.

Q And did you go back?

A Yes, we did. We went up and I got the truck and I went over and I asked him, again, why I couldn't [6.32] use the tools.

Q What did he say?

A He became very nasty again, started raising his voice and I told him—I just wanted to know what his reasons were for, you know, having this attitude, and that I didn't want any trouble. I just wanted to know, you know.

And so we, you know, argued like back and forth—more on his side. I wasn't looking for any trouble and he came out with the phrase, you know, you people are all alike.

So, you know, I asked him—I said, well, what do you mean by "you people"? He said, you know what I mean, you black bastard, and it was at that time that I hit him.

Q How many times did you hit him?

A Once was enough.

Q What happened then?

A He fell to the ground. He got up stumbling around.

Sam Law, the guy that was in the truck who took me up there, he came around. There was like a large pile of lumber separating us and he didn't really know what was going on. He heard a commotion and he came around and he asked me what was [6.33] happening. I told him. And he said, well, maybe we better go on down to the Electric Furnace. So from there we left and—

Q What happened later that day?

A Well, when I got to the Electric Furnace, it wasn't long before I got a call and I was supposed to come back up to the police station for a meeting.

Q Who attended that meeting?

A Paul Taylor, Leon Bemenick, Sam Law, myself, Lou Kornet, foreman, Al Carey, shop steward, Lionel Beck, supervisor.

Q Looking at Exhibit P-711—

A P-711?

Q P-711. That's a lucky exhibit.

The third page through to the last one is the summary of that meeting. It's four or five pages.

THE COURT: Is that what different people said at the meeting?

THE WITNESS: Yes.

THE COURT: Including your statement, right?

THE WITNESS: Yes.

THE COURT: The account that you gave at that meeting is substantially accurate, to the [6.34] best of your knowledge?

THE WITNESS: Yes, it is.

BY MR. SEGAL:

Q What was the result of that meeting?

A Lionel Beck told me that he was going to have to give me four days suspension and three years probation.

Q Did he say anything about the impact on him, of you being called a black bastard?

A The impact on—

Q The impact on Lionel's decision, whether that affected his decision to give you four days?

A No. He said it was something that he had to do. I hit the guy and he didn't say anything about the guy calling me names.

Q Did you go to the union after that?

A Yes, I did.

Q When?

A At the end of that day.

Q Who did you go to—who did you see?

A I talked to Bennie Pilotti and Mr. Brown.

Q And you described the incident to them?

A Yes, I did.

Q Including everything?

A Everything.

[6.35] Q They filed a grievance?

A Yes.

Q Looking at Exhibit—at 710, that reflects the grievance they filed?

A Yes.

Q Do you know why in that grievance, as stated there, the statement—your defense of what this fellow had called you isn't offered at all?

A No, I don't.

Q Do you know why it isn't mentioned at all?

A No, I haven't the slightest idea. Because I know I explained the whole situation to him.

Q Had you ever been involved in any fighting incident at Lukens before that?

A No, I haven't.

Q Have you ever been involved in any fighting incident at Lukens since then?

A No, I haven't.

* * * *

[6.41] THE COURT: Did you make any inquiries as to why no disciplinary measures were taken against Mr. Taylor? Did you ask the union to check into that?

THE WITNESS: Yes. After I was interviewed at the police station, my main question was that, you

know—I know that I have to have time off, but I couldn't understand why there was nothing being done with Paul Taylor, since he was the one who provoked me, you know, to do what I did because it would have never happened if he didn't provoke me with racial slurs.

* * * *

[6.59] JAMES F. WORTHY, sworn.

DIRECT EXAMINATION

BY MR. EWING:

Q When did you work for Lukens Steel Company, Mr. Worthy?

A I start working for Lukens Steel Company in 1943.

Q And when did you leave there?

A In April, 1977, '76.

* * * *

[6.61] Q You first applied to Lukens in 1943, did you?

A That is correct.

Q Did you ask for any particular job?

A No, I didn't.

Q Were you offered any choice of job?

A No.

Q And what job did you take?

A I was given a job in General Labor.

Q Working in General Labor, did you work all over the mill?

A Yes, I did.

Q Were you able to observe areas of the mill where predominantly black people worked?

A Yes.

Q And what were they?

A From what I observed, if it wasn't in General Labor, it was a Track Gang, if it wasn't a Track Gang a Stocking Gang or Scrap and By-Products and Shear Line on the 140 Mill and same 120.

[6.62] Q What about the Open Hearth Pits?

A Yes, also the Open Hearth Pits.

Q Bricktenders?

A Bricktenders also.

Q Conductors?

A This is true.

Q Were there any other blacks working in Lukens?

A In other areas it was just a token thing. When it came to the hard work, the menial work this is where you find it was predominantly black.

Q Were there any black people working in skilled jobs when you started at Lukens?

(Pause.)

A Just about as many as you can count on one hand.

Q Can you tell us who any of them were?

A I see there was a man of Percy Watford who worked on the Open Hearth Floor and I think at that time back in the '40's a man by the name of Jock McNeil who worked in the Machine Shop, Lukenweld.

Offhand I can't remember anybody else.

Q Was there anybody in the Riggers?

A Oh, yes, a young man in the Riggers, they call him "Smokey." His real name I don't know.

Q Can you compare the jobs that you mentioned that were predominantly black, compare those jobs to jobs held by white [6.63] people with regard to the amount of physical effort that was involved?

A On any one of those jobs that were mentioned here they were all physical, any of those jobs, the Labor Gang, it was physical; on the Track gang, it was physical; and Brick Shear, it was physical; Open Hearth, physical; the same on the Shear Line; in the Scrap, it was nothing just back-breaking hard work. This is all we could get.

* * * *

[6.87] WILFRED L. MAYFIELD, sworn

DIRECT EXAMINATION

BY MR. SEGAL:

Q Mr. Mayfield, are you currently employed at Lukens Steel Company?

A I am.

Q When did you first begin your employment at Lukens?

A August 3, 1950.

* * * *

[6.95] Q Do you know a man by the name of Cliff Wilson?

A I do know Mr. Wilson.

Q Did Mr. Wilson bring you a problem as Shop Steward?

A He did.

Q Can you describe the problem he brought you?

A He and another employee was assigned to the Navy Armor [6.96] Building and it ran short of work so the Foreman sent them back to Nickel Cladding to be assigned.

Q Do you know who the other employee was?

A Dick Murray.

Q Is he white or black?

A White.

Q And Mr. Wilson?

A Black.

Q Go ahead.

A When they reached Nickel Clad he had work for a Grinder but no Condition Leader. They sent Wilson home and let the Condition Leader move down and work in Wilson's place.

Q Did you go with Mr. Wilson to Mr. Diem?

A I did.

Q What happened?

A We went in and Diem said he wasn't going to pay him.

Q Did you go to see anyone in the union about the problem?

A I did. I went to the Committeeman, Mr. Books.

Q Was he white or black?

A He is white.

Q And what did Mr. Books tell you?

A Mr. Books say that was a violation and that he was going to file a grievance.

Q Did he give you anything at that time?

A Not that day he didn't.

[6.97] Q Did he give you anything the next day?

A The next day he did.

Q What?

A A grievance.

Q What were you to do?

A Take it back to Norman Diem, get him to put a number on it and answer it.

Q Did you do that?

A I did that.

Q And what was Mr. Diem's response?

A He wouldn't answer it. He said he would want to talk to Books before he answered it.

Q Did he talk to Books, do you know?

A I went—yes, he did talk to him.

Q How do you know that?

A Well, Books say he did and he say he talked to Books.

Q And what was the result? Was the grievance filed? What happened?

A Mr. Books told me that he was going—I went back to Mr. Books and I told him what Diem said. Books said, "Forget about the grievance because I am going to agree for it to be settled."

Q Then what did you say?

A I told him this was wrong because Wilson had a day's pay coming to him.

[6.98] Q And what was his response?

A He said, "Well, I agreed to settle it." And I went back to Norman Diem and Diem told me, he said, "Well, Books is your superior in the union" and he said, "I am not going to pay it," and he said, "If it comes time I have to give a day's pay I will give it to a white man before I give it to a nigger anytime."

Q Do you remember those words?

A I remember those words.

THE COURT: About when was that?

THE WITNESS: I beg your pardon?

THE COURT: About when did that happen?
THE WITNESS: That happened near the '70's.

* * * *

[6.111] Q Mr. Mayfield, bringing you further up timewise to about 1978, did you begin experiencing some scheduling problems?

A I did.

Q Can you tell us very generally what those scheduling problems were?

A Yes. I will try to be brief. More or less it was—the whites in my department was getting more benefit out of the schedule than the black employees.

Q And what benefits in particular were they getting?

A Increase in operation. I will try to outline this very briefly.

Q Okay.

A My first job preference I am the second. The second job I am the oldest man on the job. When I go to relieve on the first preference job, I have to start on midnight and the older man work 4:00 to 12:00. When I bump back to the second preference job I am the oldest man. They tell me I had to work midnight because I am the oldest.

Q You were working midnight even though you had different seniority?

A That is right.

Q Did you talk to anybody about this in the company?

A I first talked to my supervisor.

[6.112] Q Who is that?

A Mr. Glazer.

Q Is he white or black?

A He is white.

Q What did he say?

A He told me, "Mayfield, I know the way the computer is set up, that it discriminates against the black employees." He said, "But I don't have the power to change it." He said, "If you will go to the union, get someone from the union to come in and sit down to talk

to me, I will be glad to change it." He said, "No problems."

Q Did you go to somebody in the union?

A I did.

Q Who did you go to?

A I went to Committeeman Ronnie Patton.

Q Is he white or black?

A He is white.

Q Did you tell him the problem?

A I told him the problem.

Q What was his reaction?

A After two trips to Glazer and two trips back to Patton, nothing happened.

* * * *

[6.119] Q Do you recall when you became a union Shop Steward?

A Oh, I suppose around '60's, I guess, 1960.

Q Do you remember for how many years you remained a union Shop Steward?

A About six or seven.

Q So that it would be your estimate then that you were a Shop Steward from 1960 until 1966 or 1967; is that right?

A Yes.

* * * *

[6.121] Q Now, the incident that you described involving Cliff Wilson—

A Yes.

Q —that happened while Books was a Grievance Committeeman?

A It happened while Books was the Grievance Committeeman.

Q Is it possible that incident occurred some time [6.122] between 1962 and 1964?

A It might have.

Q But you are positive that it happened while Books was the Grievance Committeeman?

A I do know it happened while Books was the Grievance Committeeman.

* * * *

[7.3] PAUL RICE, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[7.34] Q You're presently a shop steward now, Mr. Rice; is that correct?

A Yes.

Q And you were appointed to that position in [7.35] 1972 by a white assistant committeeman?

A Yes.

Q In that position, one of the things that you do is to represent employees in your department who have complaints against management based on race discrimination?

A Yes.

Q And, as a matter of fact, in that capacity, you have handled grievances for other black employees who allege that they were discriminated against because of their race?

A Yes.

Q And you have achieved satisfactory results for several of employees in those complaints, haven't you?

A Yes.

Q In handling complaints as a shop steward, you've received instructions that you're to handle complaints of black employees and white employees exactly the same; isn't that right?

A Yes.

Q And that if you have a complaint of race discrimination; which you can't handle in the shop, that the proper course of action is to refer it to the Civil Rights Committee; is that right?

A Yes.

* * * *

[7.37] JOHN C. McNEIL, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EWING:

Q Mr. McNeil, what's your present occupation?

A I'm with the Department of Health, Safety Inspector.

Q Did you retire from Lukens in 1972?

A I did.

Q When did you start to work at Lukens?

A November 1942.

* * * *

[7.85] Q Now, during the time that you worked in the machine shop at Lukens and since '61, have they had apprentice programs?

A At Lukens, yes.

Q And how many people had started in those programs since you came in there in '61?

A In a class, you mean?

Q How many altogether, between '61 and the time [7.59] you left in '72?

A I would say, maybe thirty, thirty-five.

Q And how many of them were black?

A Only one.

Q Who was that?

A A fellow by the name of Bush, Ken Bush.

Q Did you make any efforts to recruit more blacks into that program?

A I did.

Q What did you do?

A Every time I heard that they were going to put on an apprentice program—start an apprentice program, I went to the union official, Ike Whitaker, and asked him if he could find some black boys that graduated from high school that were good, was prepared for a task to come into the machine shop.

Q What was his response to that?

A Ike told me that he had sent several fellows over to the employment office to sign up.

Q Uh-huh?

A And he said that when he followed through on it, the company told him that none of them passed the test.

Q Did he say he'd do anything more about it?

A No, he didn't.

[7.60] Q From your experience, did you teach people in this apprentice program?

A Yes. At Lukeweld, I talked to the operators who wanted to become a machinist. They were allowed so many operators to one machine, which I was to help train the operators and the apprentice boys.

Q At Lukens, when you were working as a machinist?

A Yes, I trained several of the young white machinists.

Truthfully, I don't even see how some of them got out of high school.

* * * *

[7.81] THOMAS RYAN, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

Q From 1954 until 1979, were you the manager of Labor Relations at Lukens Steel Company?

A I was.

Q In that capacity, you were responsible for all labor negotiations with the union, were you?

A With the exception of the first one in 1954.

* * * *

[7.88] Q Now, during your twenty-five years with chief labor negotiating for Lukens, the company from time to time proposed mergers of various seniority subdivisions, didn't they?

A Yes, sir.

Q With respect to all of those mergers, the only reason for the mergers, as far as you know, is to achieve greater flexibility for management; is that right?

A That was our intent.

* * * *

[7.108] Q Now, you're aware, aren't you, that at one point in time you, while you were working for Lukens, the locker rooms were segregated on the basis of race?

A I know of one locker room that was all black, but that was by choice.

THE COURT: Whose choice?

THE WITNESS: The employees' choice, sir.

BY MR. BORISH:

Q Let me show you a copy of a letter that's been marked as P-107.

Would you read that, please? Did you have a chance to read that letter?

A Yes.

Q Do you have any recollection of writing that letter, Mr. Ryan?

[7.109] A No, I don't, but I certainly wrote it. This has my signature.

Q And do I take it from your previous testimony that, as far as you know, the locker rooms at Lukens have never been intentionally segregated on the basis of race?

A As far as I know, it was by choice and by impression formed.

Q I'm not talking about choice now. I'm talking about intentional segregation by Lukens.

As far as you know, were any of the locker rooms at Lukens intentionally segregated by Lukens?

A No.

THE COURT: When you say by choice, do you mean the white employees chose to keep the Negroes out of their locker rooms?

THE WITNESS: The blacks chose to keep the whites out of there.

THE COURT: The company didn't interfere with either—

THE WITNESS: No, sir.

BY MR. BORISH:

Q Now, the one locker room that you're referring to, is that the same group of buildings that's [7.110] referred to in this letter, P-107?

A Plants 1, 2 and 3 of Pressed and Formed Products area. I'm talking about the Pressed and Formed Products area.

Q In the last—next to the last paragraph of the letter, you state that, "The company and informed local union representatives expect an expression and reaction of discontent because of the personnel movements required for the integration of employees in this area and the manner in which this discontent may be displayed cannot be predicted at this time."

From whom was that expression of discontent required?

A It was expected from the employees who use the locker room on the first floor. I don't know whether it was Building 1 or 2 or 3 of the Pressed and Formed Products, but they liked their locker rooms. They didn't want it changed. It was very convenient to the work place and they were resisting a change, which meant a locker room some three hundred yards removed from one that was maybe only ten yards from the work place.

Q Did you expect any expression of discontent from white employees?

A No, sir.

[7.111] Q You only expected it from black employees?

A That's right.

Q How do you know?

A As a matter of fact, the whites were cleared out of their locker rooms and were up at the new locker rooms, I believe, before the blacks got in there.

Q Mr. Ryan, what led you to believe that there would be an expression of discontent from the black employees?

A Well, I could hear what supervision was telling me, that they're darn unhappy about being moved.

Q Did you ever hear any black employee, that he was darn unhappy about being moved?

A No, sir.

Q Mr. Ryan, do you have any idea why a nondiscrimination clause was not put in Lukens' collective bargaining agreement in 1962?

A No, sir. The only thing I can say, it came out, and I guess we just missed it in, needed the item, but I never felt that was any great problem since it was our policy, only.

Q The addition of such a clause was discussed at company negotiation committee meetings, wasn't it?

A I don't recall whether it was or not, but we were obligated to put it in, as it was part of an [7.112] industry settlement.

Q And failed to do it?

A We missed it.

Q Well, I just want to get on the record whether you know that it was discussed at company negotiation committee meetings? Was it or wasn't it?

A It probably was.

Q Well, let me—

A This is no great deal for us. We had the policy.

Q Let me show you some documents to establish conclusively that it was discussed.

A I won't argue with you.

THE COURT: He's agreeing with you. I think those documents speak for themselves anyway. Let's move on.

* * * *

[7.114] Q Let me show you a document that was marked as Plaintiffs' Exhibit 15.

May I ask you to read the first two pages of that? Well, actually, to save time, all you have to read is paragraph 2A and then paragraph 7A.

THE COURT: Increase in job classifications.

BY MR. BORISH:

Q Do you remember back in 1965 the job classification of the trade and job class were increased to two jobs?

A Job classes were increased by two job classes throughout the industry.

Q And under this supplemental agreement on page two of paragraph 7A, those arrangements that are being talked about in that paragraph, you understood those to include the use of the Wonderlic test as [7.115] an admission requirement into those trade and craft jobs, didn't you?

A I can't say that I did.

* * * *

[7.124] Q Now, regarding the questions you were asked about testing and Exhibit P-15, I will show you a copy of a document I have marked Union 443 and ask if you recognize that. (Handing witness.)

A I do recognize this document covering union proposals for the negotiations of 1965.

Q And I call your attention to Page 2 of that document to the Paragraph numbered 20. Is it a fact that the union proposed that the company eliminate all tests in the 1965 negotiations?

A Yes, they did.

Q And is it also true that the union expressed to the company at various times its objections to the use of the Wonderlic Test for entry into trade and craft jobs?

A That is correct.

Q And the craft testing that you understood the union [7.125] not to disapprove or not to object to was the testing for upgrading within a craft from Craftsman "C" to Craftsman "B" to "A"; is that right?

A That is correct.

Q And the Wonderlic Test was not used for that purpose; is that right?

A No, sir—no, ma'am, no person—

THE COURT: Just say not at all.

BY MS. CLARK:

Q Mr. Ryan, on P-15 which you were shown on direct examination, do you recall now what we are looking at?

(Handing witness.)

A This was about the reclassification, wasn't—

Q In Paragraph 7 which your attention was directed to which uses the term "The arrangements heretofore in effect for entrance into a craft job."

Is it possible that that term refers not to testing but to the practice of allowing Craft Helpers to move up into a craft job regardless of whether there was a vacancy in that craft job?

A We permitted people to move up from Helper to the craft starting level, "C" level, whether or not there was a vacancy.

Q It is possible the term "arrangements" in this memorandum was used to refer to that practice rather than to [7.126] testing practices?

A I can't say for sure, it could be.

Q In any case, whatever this meant it was your understanding that the union was not giving up its right to object to the use of tests or to file grievances over them if they were used in these jobs; is that right?

A The union did not give up the right to protest.

* * * *

[7.128] Q Okay. Now, Ms. Clark showed you a set of union [7.129] proposals in 1965 in which the union proposed to eliminate all testing. The union proposed that again in 1968, didn't they?

A I am not so sure they didn't propose it every year, every time we negotiated.

Q Let me show you a document that has been marked as Plaintiff's Exhibit 217 and I will refer you to the third page of that. It is minutes of the company union negotiations, the seventh meeting in 1968.

Does that refresh your recollection at least in 1968 the union also proposed to eliminate all testing?

A Yes.

Q And do you remember that the company's—one of the company's responses was that the company felt that the union was arguing for a minority group in making this proposal?

A Yes, I do recall that.

* * * *

[7.133] J. LOUIS IRWIN, sworn.

DIRECT EXAMINATION

BY MR. BORISH:

Q Mr. Irwin, are you presently employed by Lukens Steel Company?

A My last day of work was January 31st of this year.

Q And from 1954 to 1979 were you in charge of industrial relations at Lukens?

A Up until a year ago, yes.

* * * *

[7.146] Q Didn't it take seven years to desegregate the locker rooms from the time the company first said it was going to institute a plan to do so?

A That particular locker room, no, I can't believe that.

Q All the locker rooms. Didn't the company say that it was going to desegregate the locker rooms in 1959 and didn't it take until 1966 at least until the locker rooms were desegregated?

A That could be, yes, plant-wide, that could be.

* * * *

[7.148] Now, what is your question?

Q Doesn't that refresh your recollection that the original plan to integrate the locker rooms at Lukens was formulated back in 1959?

A Yes.

Q But in 1966 didn't the company ask the union to postpone desegregation?

MR. LANDIS: Of what?

BY MR. BORISH:

Q Of the locker rooms.

A Did what?

Q Postpone desegregation.

THE COURT: Delay.

THE WITNESS: If so, there were reasons for that and not unilaterally company judgment.

BY MR. BORISH:

Q Well, whose judgment was it other than the company's?

A I would like to use an example. I can picture one locker room, one building relatively small with a partition. Both groups objected to integration. We delayed that until we developed a plan and the plan was really very simple. We just tore the partition down. It was a cement block, took every one out, painted it, renovated it, took the partition out and assigned all of the employees in a mixture way.

Now, that is an example of this possible [7.149] delay. We did not want a confrontation. We wanted results.

Q Who told you that there might be confrontation?

(Pause.)

A First, I wouldn't recall anyone, probably from the Foreman, probably from some of the people who were in that locker room.

Q You don't recall any of their names?

A Any names, no, I don't. I recall the incident very well.

* * * *

[7.151] Q You don't know why a non-discrimination clause wasn't included in the 1962 collective bargaining agreement, do you?

A No.

Q But before such a clause was added to the 1965 agreement, isn't it correct that a Government investigator recommended that such a clause be added?

A No, I don't recall that but I will support the comments that Mr. Ryan made earlier.

Q Well, we didn't talk about this with Mr. Ryan earlier. I want to know whether before it was added finally, such a clause was added in 1965, that came after a Government investigator had recommended that Lukens add such a clause to its collective bargaining agreement?

A I don't recall because I don't recall a Government representative.

Q Let me show you a document that has been marked as Exhibit P-87. (Handing witness.)

If you would look at the only last two pages. The first page was on there when we got the document from the company.

[7.152] (Pause.)

The language is on the second page of the memorandum, the third page of the document.

(Pause.)

A Yes.

Q Do you see where it says "We agreed that a nondiscrimination clause should be inserted in the next labor agreement?"

THE COURT: We agree that a discrimination clause.

MR. BORISH: A discrimination clause.

THE COURT: I don't think that is what they meant.

THE WITNESS: Yes, I see it.

BY MR. BORISH:

Q Does that refresh your recollection at all about whether a Government investigator suggested that such a clause be included before it was finally included?

A Well, I do recall now that I see it, I remember the name of one.

Q He was there in connection with Government contracts to Lukens Steel; isn't that right?

A That is right. I remember that. I remember meeting with him. The detail of this report I don't recall. This was 16 years old.

* * * *

[8-14] JOHN BAXTER, sworn.

DIRECT EXAMINATION

BY MS. GARTRELL:

Q Mr. Baxter, what is your present occupation?

A I am a body and fender mechanic.

Q And where are you a body and fender mechanic?

A Dallas, Texas.

Q How long have you been in Dallas?

A Three years.

Q Did you work at Lukens at one time?

A Yes, I did, twice.

Q Would you look at what we have marked in your folder that I have handed you as the first document, P-807 and tell me if as far as you know that is your employee record card from Lukens Steel Company?

A Yes.

Q You worked there for a while up until '48-49 and you left the company and went back in 1970?

A That is correct.

* * * *

[8-29] Q When you were there in 1949 did you protest to anybody at any time the fact that the locker rooms were segregated and the bathrooms were segregated?

A I can't recall what exactly was said but I did talk to one of our Shop Stewards, Harry Reeder.

MS. CLARK: Objection, Your Honor, on the same ground as before.

THE COURT: Same ruling as before, namely no ruling yet.

BY MS. GARTRELL:

Q Do you remember if he had any response—what did you say to him?

A I said, "Harry, why do we have to be in these locker rooms with all colored," used the word colored, "and all the whites over there?" He said, "That is the way it is, son."

* * * *

[8-30] Q You spent some time while you were employed between '70 and '77 in the pool, in a pool job. Do you recall that?

A Yes.

Q Was the pool used by the company to discriminate against black employees?

MR. KLUGHEIT: Objection, Your Honor.

THE COURT: Objection to the form of the question sustained.

BY MS. GARTRELL:

Q Did you observe any discrimination in assignment to pool jobs upon layoff?

A Yes.

Q What kind of discrimination?

A As I said before, the blacks usually went to the Track Gang and the whites were assigned jobs in other areas.

Q Was it your observation that blacks were generally assigned to the pool initially when they were hired?

A Yes.

Q Do you know if any blacks protested about that practice?

A Would you ask me that question again?

[8-31] Q Do you know if any black employees protested that blacks were disproportionately assigned to pool jobs when they were first hired?

A Yes. On numerous occasions I know even at the union meetings they used to talk about it.

Q At union meetings when that subject came up, what was the response of the union officials?

MR. CLARK: Objection, Your Honor, on the same ground.

THE COURT: You have a continued objection on a continued deferred ruling.

MS. CLARK: Thank you, Your Honor.

THE WITNESS: The union used to always say the pool was to protect the job, keep you from getting laid off out in the street.

BY MS. GARTRELL:

Q Is it your testimony that the union defended the pool?

A Oh, yes.

Q Did the subject of race discrimination against employees at Lukens come up at any union meetings at which you were present?

A There was one union meeting that I attended. I didn't attend too many of them. There was one I attended when a gentleman, I don't know who he was, I don't even know his [8-32] name or anything, where he got up and he started to talk about the racial discrimination on the West Side. Mr. Cavuto told him to see his Committeeman. When he tried to discuss it further he was told he was out of order.

Q Who told him?

A DePedro.

Q Who is DePedro?

A I think he was the Secretary.

Q For the entire time you were at Lukens in the '70's, were you a local member of 1165?

A Yes, I was.

Q Were you aware of any efforts by the union to improve or increase job opportunities for black employees?

A No, I was not.

* * * *

[8-39] Q Mr. Baxter, the conversation you reported to Harry Reeder occurred during the first part of your employment at Lukens?

A That is right.

Q And Mr. Reeder is black?

A Right.

Q You described various occasions people were laid off and saw white employees going to certain parts of the mills and black employees going to other parts. You are familiar with the contract provision employees on layoff to exercise job claims on layoff where they worked previously?

A Yes.

* * * *

[9.98] JOHN MUHS, sworn.

DIRECT EXAMINATION

BY MR. BORISH:

Q Mr. Muhs, you are presently employed by Lukens Steel Company?

A Yes.

Q And what job do you presently hold?

A I am supervising Engineer of Appropriations.

Q And since 1972 have you been involved at Lukens in overseeing how the company spends it money for capital investment?

A Yes.

Q Now, from 1958 until the early 1970's, were you an assistant to Mr. Tom Ryan who testified here last week in the Labor Relations Office?

A Yes.

THE COURT: He testified in the courtroom.

MR. BORISH: Yes, thank you.

BY MR. BORISH:

Q And in that capacity did you participate in formulating company strategy, negotiating, to be used in negotiating sessions with the union?

A I did research and supplied ideas, feedback from both union representatives and employees within the bargaining unit. [9.99] If that constitutes—formulating strategy, yes.

Q You were also a member of the internal company Negotiating Committee, were you not?

A Yes.

Q And from 1959 through 1971 you participated at the bargaining table, didn't you?

A That is correct.

* * * *

[9.120] Q Nonetheless, you wrote another memorandum about a year and a half later in which you also talked about past racial discrimination. Isn't that right? Let me show it to you. It has been marked as Plaintiffs' Exhibit 70. (Handing witness.)

A I wrote this.

Q Looking down at the fourth paragraph, is it your testimony that you were once again inaccurate—

A Yes.

Q —when you referred to remnants of past racial discrimination?

THE COURT: He didn't. He said past discrimination.

BY MR. BORISH:

Q Remnants of past discrimination. You were inaccurate again?

A Yes. I have a stubborn streak.

Q Yes, did you ever conclude it was a mistake that you kept writing these memoranda?

[9.121] A Yes, it was.

Q It was a mistake?

A This proceeding makes it a mistake, yes.

Q I am correct, am I not that Mr. Mulligan, to whom this memorandum was sent, he is the company general counsel, in-house?

A That is correct.

Q Do you recall any response from Mr. Mulligan to this memorandum?

A No, I do not.

Q He never called you back and asked you, "John, what are you talking about when you refer to remnants of past discrimination?"

A I do not recall any response like that.

Q As a matter of fact, you don't recall any response from anyone who is listed as having received a copy of this letter, do you, telling you anything you wrote in there was inaccurate?

(Pause.)

A No.

Q Including Mr. Ryan. Isn't that right?

A No, no. There were times when Mr. Ryan commented that I was persistent.

Q By the way, looking back to the first page where in the fourth paragraph the document states the basic objective of the committee was to afford greater opportunity enjoin [9.122] enrichment and goes on to state it was unofficially to overcome the remnants of past racial discrimination still preserved by our current seniority system.

You conveyed that unofficial purpose to the union of the subcommittee, didn't you?

A Yes.

Q And you were told by Mr. Brown, the union Chairman of the Subcommittee, the President of the Union would not let the union members meet to continue this dialog?

A Yes.

* * * *

[9.123] Q And do you recall there was a group of employees from the Open Hearth Pit Subdivision that complained to you about lack of promotional opportunity and about initial assignment to the Pit Subdivision because of their race?

A Among a lot of other subjects; yes.

Q Those were two of their complaints, weren't they?

A Yes.

Q Looking over at the board here that we have set up, that subdivision was pretty heavily black, wasn't it, in those days?

A Yes.

Q As a matter of fact, in 1978 there were only 30 blacks [9.124] and only two whites in that subdivision?

A I can't testify to the composition of that subdivision in 1978.

Q Those employees told you they didn't want any record kept of this complaint; isn't that right?

A They didn't want any record kept of all of our conversations. They were distruthful of institutionalized problem solving. They wanted to talk directly to somebody who might use some indirect means about solving their problem.

Q They were also talking about repercussions from supervisory personnel if they found out they were complaining; isn't that right?

A That was one of the bases of their request for security, yes.

Q Why do you think they came to see you?

A Because I was on the bottom of the totem pole.

Q You were the least threatening?

A I guess so, yes.

Q You concluded their complaints of racial discrimination were unfounded, didn't you?

A When I tried to pursue their claims regardless of the channel they suggested or whether it was a channel of investigation that I designed, the trial always grew cold. I couldn't get it back.

Q Who did you talk [illegible] about these complaints?

[9.125] A All kinds [illegible] ent people, union representatives, company—salar d employees, hourly employees, all kinds of people.

Q You don't remember any names?

A I could recall them if I [illegible]w the seniority list in front of me. I could pick them out. There were 3,000 people in the bargaining unit. I don't know a lot of them. I have seen a lot of familiar faces in the couple days I have been here but it was a 10-year gap or a 9-year gap between my being thoroughly involved in that and now.

* * * *

[9.136] JAMES L. THOMPSON, sworn.

* * * *

DIRECT EXAMINATION

BY MS. GARTRELL:

Q Mr. Thompson, were you employed by Lukens Steel Company?

[9.137] A Yes, I was.

Q From 1955 until 1973?

A Yes.

* * * *

[9.141] A That was the Pickling Tanks—I am not too familiar with all departments over there.

Q Was By-Products over there?

A By-Products.

Q Green Anneal?

A Yes. Those were some of them.

Q Navy Building?

A Yes.

Q How long did your committee operate?

A Our committee operated, I don't believe it was quite two years, over a year, maybe a year and a half.

Q Were your discussions with Mr. Ryan along the same line as you have told us your discussions were with Mr. Muhs?

A Yes, they were.

Q Did you feel at the end of your committee's functioning that the committee had accomplished what it set out to do?

A I felt that our committee was a failure.

Q Did you feel that you were able to convince Mr. Muhs that in fact discrimination on the basis of race existed and was a problem at Lukens?

A No, I did not.

* * * *

[9.137] Q Were you a member of a self-appointed Ad Hoc Committee of black employees at Lukens Steel Company in the 1960's which presented to Mr. Muhs a number of complaints of racial discrimination?

A Yes, I was.

Q Who was on that committee?

A That committee consists of Donald Parker, Isaac Smith, James Hines, Carl Cannon, Alphonso Jones and I.

Q Were all of you black employees in the Pits in the Open Hearth section?

A Yes, we were.

Q How did you come to form that committee, Mr. Thompson?

A Well, we were dissatisfied with the conditions that [9.138] existed at Lukens. So we thought we would do something about it by forming our own committee to see if we could get some results.

Q Who did you go to with your complaints?

A Our first initiation of our complaints we went to our immediate supervisors and then we saw that they didn't have the power to do anything about it or wouldn't take the power. So we thought we would take it further. So we thought we would go to Labor Relations which consist of Tom Ryan and John Muhs.

Q At that time?

A Yes.

Q And did you go to both of these men?

A Yes, we did.

Q Did you see them separately or together?

A Well, sometimes we would see them separately, sometimes we would see them together but most of the time we would see them together.

Most of our get-togethers were with Mr. Muhs.

Q How many meetings did you have with Mr. Muhs, where were they held and how long were they?

A Sometimes our meetings were held at Mr. Muhs' office over at Strode Avenue, and we would have meetings at Strode Avenue at personnel in the conference

room, consisting of Mr. Muhs, Mr. Ryan, our immediate supervisor and other personnel that belonged to Lukens in the official capacity.

[9.139] Q Were those lengthy meetings?

A Some of them were two and three hours, some were three and four.

Q Now, what was it that you put on the table in front of Mr. Muhs?

A Well, we put on there about segregated washrooms and the denial of promotion to the blacks. These were two of the things that we put on the agenda.

Q Did you protest about promotions to salaried jobs?

A Yes, we did.

Q [Foreman] jobs primarily?

A Yes.

Q Did you protest about the company's failure to hire blacks into other salaried departments and other salaried jobs?

A Yes.

MR. KLUGHEIT: Your Honor, I will object and ask the Court instruct Ms. Gartrell not to use leading questions.

THE COURT: Try not to use leading questions.

BY MS. GARTRELL:

Q I want you to tell the Court as nearly as you can remember everything you complained about to Mr. Muhs that had anything to do with racial discrimination. First of all, was the complaint of this committee and the business of this [9.140] committee solely concerned with the racial discrimination at Lukens?

A Yes.

Q What were your complaints?

A Our complaints were concerning the wash houses, facilities, our complaints were the hiring practice they had and promotional practice in our department, which was the Open Hearth Pits, Melting Department, Personnel Department, Carpentry Department, the Paint Shop,

the Machine Shop. Those are some of the complaints that it centered around.

Q Did Mr. Muhs believe you when you told him that there were segregated facilities, locker rooms, washrooms and so forth?

A No, I don't believe he really did.

Q Did you take him on a tour in order to show him segregated facilities?

A We took Mr. Muhs—we complained. We got complaints from those on the West Side. So we brought our complaint to Mr. Muhs and told him where this initiated. So we took Mr. Muhs over on the West Side for him to see for himself.

Q Did he believe you then?

A I don't believe he did.

Q Did he do anything about them?

A Not to my knowledge anything was done.

* * * *

[9.170] BY MR. SILBERMAN:

Q Mr. Thompson, of the four other people on the informal committee besides yourself, did any of them hold any positions in the union?

A Carl Cannon and James Hines were Shop Stewards as far as I know.

* * * *

[9.196] JAMES L. DAVIS, JR., sworn.

DIRECT EXAMINATION

BY MR. SEGAL:

Q Mr. Davis, are you currently employed at Lukens Steel Company?

A Yes, I am.

Q In what position?

A Mechanic.

Q And when did you start at Lukens initially?
A June of 1959.
Q And what position did you start in?
A Laborer, General Laborer.

* * * *

[10-12] Q Mr. Davis, do you know a man by the name of Norman Diem?

A Yes, I do.

Q In 1968, were you involved in an incident with Norman Diem?

A Yes, I was.

Q Can you describe that incident for us, please?

A Yes. At that time I was working the Plant F Conditioning area, working with a Mr. Stollard for the company, doing some research and testing of new [10-13] equipment.

Q Mr. Stollard was an hourly employee?
A Salaried.
Q Salaried?
A Yes.
Q White or black?

A White. He was in charge of testing some new burners. We were having trouble at that time with our electrical system throughout the plant in the grinding areas.

So they were installing some new grinders produced by the Basch Grinding Company from Germany. They had to install a new three-cycle electrical system for this testing procedure.

The representative from the Basch Company and representatives from Lukens were in the area, and Mr. Diem brought a worker from the Condition Department to By-Products area to work with me. And we both had to conduct a 12-minute test with these new grinders to see if they will be acceptable and up to the company standards.

Q Was this other employee white or black?

A Black. Mr. Diem, I had never worked for him, didn't work for him, had no conversation with him or anything before that time.

[10-14] His work did a 12-minute work period first, and he did not keep the ohmmeter between 9 and 12 ohms as required. Mr. Stollard told me to keep a lot of pressure and keep the ohmmeter between 9 and 12 meters, which I did.

When the first Grinder got finished his 12-minute work period, Mr. Diem walked over to him and tapped him on the shoulder and cut off the grinder. Mr. Diem proceeded to grab him by the ear and pull him around off the box and kicked him in the rear several times, at which time the rest of the people in the area found that amusing and they laughed. I said nothing and did nothing. I just looked, and I just looked at Mr. Diem.

Q And this other Grinder was black?

A Yes, he was black. So after I had ground for 12 minutes, I felt a sharp pain in the back; and I jumped up off the grinding stool and turned around. And there was Mr. Diem. He had kicked me in the back.

Q If you would turn to Plaintiffs' Exhibit 952, the employee record card of Charles Norman Diem, it doesn't list any discipline given to Mr. Diem.

Do you know whether he was given any discipline for what he did to you and to this other man?

A No, nothing was ever said to my knowledge.

[10-15] MR. SEGAL: I would simply like to note for the record, Your Honor, on the last page of that exhibit there is a document titled "Employee Change of Status," apparently representing a salary increase for Mr. Diem.

And under reason, for conditioning, and detail it says: "Merit raise has been due and outstanding job." The signatures under approvals are: W.J. Metcalf, I think, N.J. Thompson, and the last signature is J. Louis Irwin.

THE COURT: Did you bring that kick to anybody's attention? Did you complain?

THE WITNESS: Yes. I told Mr. Brown about it, our Union Representative.

BY MR. SEGAL:

Q And what did he do?

A He said, "Forget about it because Mr. Diem apologized." The German representative of the Basch Company couldn't speak English, and through an interpreter he asked me if I was hurt. And I said I was all right. He preceded to walk out of the plant. He apologized and brought him back. He pulled my shirt up and looked at my back and asked through an interpreter why did this man kick me and was I hurt. I told him I was all right, and Mr. Diem apologized. And that was [10-16] supposed to be the end of it.

Q He apologized with this German man there?

A Yes.

MR. SEGAL: No further questions, Your Honor.

CROSS-EXAMINATION

BY MR. KLUGHEIT:

Q Mr. Davis, do you recall the date of this incident that you described involving Mr. Diem?

A No, not offhand I don't.

THE COURT: Approximately? Can you give us an approximate time? Sometime longer than last week I assume. Give us your best estimate.

THE WITNESS: It was around—in the '60s.

BY MR KLUGHEIT:

Q Let me direct your attention to the last page of P-952, which is the increase from Mr. Diem that your counsel just read into the record. That increase indicates it is dated effective 6/5/66.

Does that mean, therefore, that incident with Mr. Diem would have been before 1966?

A In all probability it was around that time because we were testing the new grinders about that time, I believe.

* * * *

[10-43] LEON WHITFIELD, sworn.

DIRECT EXAMINATION

BY MS. GARTRELL:

Q Mr. Whitfield, are you presently employed at Lukens Steel Company?

A Yes, I am.

Q What is your job?

A Crane operator.

Q How long have you been employed at Lukens?

A Fifteens years.

Q Since 1965?

A Yes.

[10-44] Q Are you presently serving on the Negotiating Committee of Local 1165?

A I am.

Q Have you previously held other positions with Local 1165?

A Yes, in the position of shop steward and grievance assistant committeeman and committeeman.

Q You were elected to the position of assistant committeeman in the spring of 1979; is that correct?

A Yes, I was.

Q Are you presently serving in that capacity?

A No, I am not.

Q Did you resign the position?

A No, I didn't.

Q Why are you not serving in that capacity at this point?

MR. SILBERMAN: Your Honor, may I renew the objection Ms. Clark made with respect to this same testimony of Mr. Davis?

THE COURT: Yes. You have continuing objection.
MR. SILBERMAN: Thank you.

BY MS. GARTRELL:

Q Why are you not presently serving in the position to which you were elected in the spring of 1979?
[10-45] A That position was taken from me.
Q By whom?
A As I can understand it, by the International District 7 and the parent body of 1165, as much as I can understand it.

* * * *

[10-71] Q Now, if you will, look at Plaintiffs' 932. This is a collection of documents dated from 1977. I will ask you to identify these various documents in the exhibit.
[10-72] First is a letter which is over a typewritten name, Leon Whitfield. There is no signature on this letter. It is dated August 18, 1977, and addressed "To Whom It May Concern."
Who did you send this letter to and why did you send it?
A I sent the letter to the Vice-President of the United Steel Workers of America, Maloney I think was his name, at the time. And the letter was self-explanatory. I am frustrated and disgusted, and I wanted to find out what can be done about the way things are being run at Lukens.
Q Was this letter returned to you or—this is a copy of a copy?
A Yes.
Q I have the signed version. Was the letter that you sent to Mr. Maloney returned to you?
MR. SILBERMAN: Your Honor, I object to all testimony about this incident. There is no possible bearing on this case.
THE COURT: The objection is noted, and I can't tell until I hear it. I will reserve ruling.

BY MS. GARTRELL:

Q Was this letter returned to you?

A Yes, it was.

[10-73] Q And is the second page of this exhibit a note by you to Mr. Lynch after you received the first letter back in the mail?

A Yes, it is.

Q This bears a stamp at the top "October 6, 1977, Pittsburgh, Pa."

As far as you know, is that stamp from the Union Office in Pittsburgh?

A Yes; I am more than sure it is.

Q Who is Leon Lynch?

A He is the Vice-President of Human Affairs.

Q Is he still Vice-President of Human Affairs or do you know?

A I think he has moved up. I am not sure.

Q Did you receive a response from Leon Lynch?

A Yes, I did.

Q Is the next page in the exhibit that response, a letter dated October 6, '77?

A Yes, it is.

Q Who is Mr. McGeehan, he appears to have gotten a copy of this letter?

A He is the District Director of District 7.

Q Now, did you receive from Mr. McGeehan in a response to your letter?

A No.

[10-74] Q All right, if you will turn past what appears to be a steel workers memorandum—and go to the October 13, '77, letter signed by Frank Mont—did you receive this letter?

A Yes, I did.

Q This is addressed to you?

A Yes, it is.

Q You had a new address at this time?

A Yes, that is correct.

Q Did you inform Lukens Steel Company you had a new address?

A Yes, I did.

Q Who is Frank Mont?

A He was the representative from District 7. I don't know the position that he held. That is the only thing that I did know about him.

Q His letter indicates that he had considerable trouble reaching you by telephone or by letter. And did you have any discussion with Mr. Mont about his claimed inability to reach you?

A Yes, I did.

Q When did you have that discussion, before or after you got this letter?

A Before.

Q And was that by telephone?

[10-75] A Yes. He called my house, and he told me that he was having difficulty getting in touch with me.

Q And what did you say to him?

A I told him how big a liar he was. He hadn't really tried, because if he had—someone was always at my house. If he had called—

THE COURT: Which of those two numbers would have been the right one?

THE WITNESS: 227-5017. The other number was the number I was working at the mill. That was left to him, an emergency at the mill. I wanted him to see at the time—

THE COURT: Okay.

BY MS. GARTRELL:

Q What else happened during this discussion with Mr. Mont on the telephone? Was there anything else said?

A Well, he told me—he asked me just about what it was I wanted to talk about. I was telling him that I wanted to talk about how ineffective our Union was at Lukens and that I could give him enough people for

witnesses to testify to the fact that we are not getting the representation that we should be getting and especially the blacks.

And I told him that these are things that our president, vice-president and chairman of the Grievance Committee will not meet with us so we can talk them out.

And I told him that—he in turn told me that we would have the meeting at the Suburban Building here in Philadelphia whereas he would get in touch with everybody in 1165 where they would be on neutral ground where all our differences could be ironed out.

And then I got this letter—

Q You got which letter?

A This is one here, October 13th.

Q Now, the next letter in this exhibit is October 21st, a letter from Frank Mont.

Did you get this letter?

A Yes, I did.

Q This says that a meeting was scheduled for October 28th in Malvern.

A Right.

Q And Mr. Mont come back to you since your first conversation and said he was going to change the location of the meeting?

A No, he didn't.

Q Was this meeting held?

A Yes, it was.

[10-77] Q Before I ask you about that meeting, the four people at the bottom of this document—I think Pilotti and Brown have been identified sufficiently—who is Bert Hough?

A That is a good question. I met him for the first time at that meeting.

THE COURT: It says a staff representative.

THE WITNESS: He wasn't for our local at that time unless he was a substitute because "Horsey"—I don't know "Horsey's" name.

BY MS. GARTRELL:

Q Is it Zitarelli?

A I think that is his name. He was our staff representative.

Q And McGeehan was Director of District 7?

A He wasn't there.

Q He is copied on this letter, though.

A Yes. He is on the letter, but he wasn't there.

Q All right, who was at the meeting?

A Well, then, Pilotti and James Brown, Bert Hough and Frank Mont and Jim Brewer.

Q Was Jim Brewer with you?

A Yes, he was.

Q He is black?

[10-78] A Yes, he is.

Q Were there any other black employees who had planned to attend that meeting but did not attend?

A Yes. Dave Brown was supposed to attend and Leroy Davis, Jr. was supposed to attend. We had two or three mornings—beginning to clutter—but we had two or three more.

Q All right, what happened at that meeting?

A Well, nothing. We were pacified. At the meeting we talked over our grievance. Frank Mont came in with the wrong attitude. He came in already with a biased attitude. He walked saying if this had anything to do with racial discrimination he wasn't going to hear it.

He hadn't heard nothing. He just met me, and this was his response.

Q Were those his first words to you?

A Instead of "hello," this is exactly how he addressed himself.

Q And what was your response to him?

A That the only thing we wanted was an audience and let him decide what we were trying to get out.

Q And then did you and Mr. Brewer put certain things in front of Mr. Mont as things which were happening that you were concerned about at Lukens?

A Yes.

[10-79] Q What did you say that you were concerned about?

A I was concerned about job consolidation. I was concerned about how the Union is not representing all the people.

The Union's function is to secure jobs or if you do have a job to see it is secure. It is supposed to be insurance against things that do happen to us, and that is not what we have up there.

* * * *

[10-84] Q Continuing with this super laborer problem, Mr. Whitfield, first of all, did you express concern about the super laborer job consolidation at the meeting with [10-85] Frank Mont on October 28, 1977?

A Yes, in parts; but he wasn't the type that could sit still nor could I paint a clear enough picture for him to see what was happening.

Q Did you express to Mont the concern the super laborer change discriminated against blacks?

A Not in that sense because I was trying to be evasive because he told me if it was racial discrimination oriented that he would walk out.

So I was showing him whereas this would set a precedent, that the Union could ill afford, because it was jumping every seniority barrier. It was jumping subdivision lines and seniority barriers.

Q Did you avoid using the term "racial discrimination" in order to have the meeting continued?

A Yes.

* * * *

[10-87] Q All right, back to the October 28th meeting with Frank Mont, were there other concerns that you expressed to Mr. Mont at that meeting?

A Yes. It came from Jim Brewer; but him as a truck driver, his driving truck for the Labor Department in Job Class 8, he said that he told the Union—and he

mentioned Pilotti and "Yi" Brown—that he had complaints against the riggers and other departments using trucks in the same way that he did. He picked up passengers and deposited passengers, and they were doing the same thing only they were getting Job Class 16 and so forth. And he said that wasn't fair.

Q Were there truck driving positions in other subdivisions than in the Motor Truck Subdivision?

A Yes.

Q What was Mr. Mont's response to Mr. Brewer's comments?

A He didn't have any response. His was more, like I said at the outset, pacification. He just told us the things he was doing, when he was coming up, and the things to look at for; but he didn't actually give any decisions of any sorts.

Q Do you remember anything else that happened at [10-88] this meeting?

A Nothing except we were told—he told [Benny] that it would be wise to listen to us if we have any gripes, to make himself available. And he told me that if we did have anymore gripes of this sort and we just wanted to get them off our chest, feel free to call him. Like I say, he was pacifying us.

Q That is what you meant by "pacification"?

A Yes.

Q What did all this have to do in the meeting with race discrimination at Lukens?

A Everything that happens at Lukens to me pertains to race.

Q How did the particular things you were complaining about pertain to race?

A All right, I will put it this way: I have complained primarily about them putting truck washing in the truck driver subdivision.

Q This is something else you raised at the meeting?

A This was my prime concern because it pertained to me, and I was driving truck in Job Class 8 and con-

stantly when I am in the crane I am in Job Class 8. When I signed up for the Transportation Department, truck driving didn't have truck washing in the subdivision.

[10-89] So as a result, they in turn—the Union and the Company got together and they decided they would put truck washing in our job description with no prior notice. We were to work one day and Tom Franklin, the superintendent of the department, came into our safety meeting and said he is doing us a favor, he is putting truck washing in our subdivision, a Job Class 5.

Now, I am a troublemaker to the company if you let them tell it; and he looked right at me when he said Job Class 5. And I said to him, I said: "Now that will cause me to have to take a pay cut with the seniority language because I am low man on the totem pole." So he said: "Well, don't give it any thought," he said, "because that will be Job Class 5 plus 12," which is incentive.

Well, I told him: "That would be the equivalent of Job Class 8." I told: "If that is so, we won't have no squabble. Make it all Job Class 8 and we won't have any argument." So nothing came out of that.

When I went to Benny and "Yi" about that and I told Gerald Johnson, he said he would look into it.

Q He was a union committeeman?

[10-90] A He was assistant to "Yi." He said he would look into it. Benny and "Yi" stuck their chest out that this was a move that they had made for the truck drivers, in case they were out on the town getting drunk and lose their license so they would have a job.

Q Was this the reason for the change that Benny and "Yi" gave you?

A That was their reason, yes.

Q Was that the reason Tom Franklin gave you for the change?

A He was patting himself on the back, he was doing us a favor.

Q Had it ever happened that you got drunk on the weekend, lose your license, and got—

A I never lost my license in any event.

Q You discussed this at the October 28th meeting?

A Yes, I did.

Q Did Mr. Mont have any response to this?

A None.

Q All right, now how did that job change discriminate against you on the basis of race?

A Well, I was exempted from having to wash trucks if I had stayed in transportation.

* * * *

[10-92] Q You said they obtained some kind of special exemption for you in particular with respect to this job change?

A Yes, they did.

Q Did you take advantage of that?

A No, I didn't.

Q What did you do?

A Got out of the department.

Q Went back to cranes?

A Yes, I did.

Q Where you are today?

A Yes, I am.

* * * *

[10-93] Q Next in this document is a letter dated December 1, 1977, from Leon Lynch to James McGeehan concerning a letter—

MR. SILBERMAN: Before we go forward, I renew my motion to strike now that we have covered everything at that meeting.

THE COURT: Motion denied.

BY MS. GARTRELL:

Q This refers to a letter you had written on November 30. We did not have a copy of that letter. Did you write such a letter on November 30th?

A Yes, I did.

Q Who did you write that to?

A I wrote that directly to Leon Lynch.

Q And what did you say in that letter?

A I was telling him that I don't feel that we were properly represented at that last meeting with Frank Mont, and I requested an audience with him. And this time I was going to give him everybody that would hear me, to have a mass meeting with him hearing all our gripes.

This time I told him in that letter that I would circulate through the Mill with petitions to have them signed to impeach Mr. Pilotti and "Yi" Brown, and I had an accident that next week.

[10-94] Q Was a meeting scheduled to be held?

A I never did get no more correspondence from Leon Lynch.

Q You had an automobile accident the following week?

A Yes, I did, December 9th.

Q How long were you out of work?

A Forty-five days.

Q So the meeting was never held?

A No, it wasn't.

Q Were you asking for a mass meeting at Lukens?

A No. I asked all the fellows that worked around me that was around me that did see me would they meet with me if I did set up this meeting with Leon Lynch.

Q Did you express in any of your correspondence or at that meeting in October any concern about the grievance processing as it was occurring at Lukens?

A That had the top position. See, that is mainly how we are being discriminated against.

Q And how was that?

A We are not—the grievances aren't framed properly. If I were to go to my committeeman and tell him I was just discriminated against and whatever way that I am discriminated against, the word would never be framed in the grievance.

Q What word?

[10-95] A Discrimination. Discrimination spoken in Lukens is like taboo. It is just not used. Because it is not used, it can't be—we are not getting the benefit of what the Union should do for us because it is not framed properly.

THE COURT: The question is: Was that discussed at the October meeting?

THE WITNESS: Yes, it was.

THE COURT: Okay, what did the Union people say about it?

THE WITNESS: Nothing.

BY MS. GARTRELL:

Q Have you ever discussed that with Union officials from 1165 at any other time since that meeting?

A All the time.

Q And have you gotten any response?

A None.

* * * *

[10-96] Q Does a shop steward have the power or authority to file a grievance?

A No.

Q What is it that a shop steward does?

A Handle first and second step grievance procedures.

Q And are those meetings at the plant level with supervisors?

A Yes, the immediate people that is involved; that is, the worker and the turn foreman and what have you.

Q That is what happens at the first step?

A Yes and second step. If you don't get no "whatchacallit" I turn over to the assistant grievance committeeman or grievance committeeman.

Q If you don't get no satisfication; is that the "whatchacallit"?

A Yes.

Q You turn it over to the assistant committeeman or committeeman and he will file a grievance if one is to be filed?

A Yes. He can take it on from there.

Q Does he make the decision to file the grievance?

A If I don't get anywhere. It is a matter I can't go to the superintendent. That is not my function. He would have to take it from me, and I wouldn't be finished. I would just relinquish it and give it to him. [10-97] Q Does anybody beside the grievance committeeman and chairman of the Grievance Committee have the authority to file a grievance for an employee?

A The only ones that can do so is the ones who are in that particular Zone.

Q Well, first let's establish whether or not any other officers or officials of the Union have a right or power to file a grievance or is it just the committeeman?

A Well, no, assistant committeeman and committeemen can file grievances.

Q Are you saying even they can only file a grievance in the Zone they represent?

A That is what the grievance book says.

THE COURT: Can the shop steward have any input into how the grievance is written up?

THE WITNESS: Yes, he should.

THE COURT: If you wanted to present a grievance on the basis of racial discrimination and they were writing up a grievance and didn't use the word "discrimination," couldn't you insist the word "discrimination," be used?

THE WITNESS: Not at Lukens.

THE COURT: Why not?

THE WITNESS: You would be voted out. [10-98] They just wouldn't do it. They would just tell you it is out of your hands.

* * * *

[11.12] Q Is it also your claim then that the International removed you from your position because of your race?

MR. SILBERMAN: Objection, Your Honor. It is a leading question.

THE COURT: Objection overruled. It calls for a yes or no answer.

THE WITNESS: Yes.

BY MS. GARTRELL:

Q Other than what you've told us, is there anything further that you would base that belief on that claim?

A Yes. I would have to base it on the facts that by introduction to Frank Mont, his first words at that meeting to me was that he will not hear or sit in on any meeting if it was discriminatory, racially discriminatory, he said, and he also said that I am to be reminded that if I did have a meeting, I would have to understand that he were the personal friend of Benny's and Yi's.

I told him I would want the meeting under any circumstances.

THE COURT: Excuse me, I don't understand that.

He told you he wouldn't attend the meeting if it was racially discriminatory or he wouldn't attend if a charge of racial discrimination was to be [11.12A] discussed?

THE WITNESS: The charge of racial discrimination.

* * * *

[11.46] Q All right. Let's talk about the election in April of '79.

Now, first, to be eligible to run for a [11.47] committeeman, you have to work in the zone in which you are running?

A Yes.

* * * *

[11.57] Q Now, after you filed your protest to the Labor Department about this election, what happened?

A What happened after I protested?

Q To the Labor Department, yes.

A Oh, you're talking about the last letter that I wrote?

Q Yes.

A I'm just getting an answer back that they didn't find in my favor from the evidence that they had gotten that they had cropped up.

Q A representative of the Labor Department came out to the plant and spoke to you and to Leroy Davis, Jr.; is that correct?

A No, nobody spoke to me at the plant, no.

Q Spoke to you at the union hall?

A No.

Q Didn't speak to you at all?

A He spoke to me at my home.

[11.58] Q Okay.

A I don't know if he spoke to Leroy Davis or not, no.

Q But he did speak to you?

A Yes, he did.

Q And you received an answer from the Labor Department saying that they didn't find in your favor; is that correct?

A Yes, they did.

Q Take a look at Union 470 and just identify the document.

A It is not in alphabetical order.

Q It is not, I apologize.

Is this a statement of reasons you received? (Indicating.)

A Yes, it is.

Q And what the Labor Department found is that in fact you were working in Zone 9 at the time you were nominated?

A No; that is not what this letter states.

Q Okay. Now, the person who protested your election was Ben Elliott; is that correct?

A That I don't know.

Q You don't know the name of the protestor?

A No, I don't.

[11.59] Q You were at the meeting after the election?

A It is alleged it is Ben Elliott. I don't know it for a fact, no, I don't.

Q Is alleged it is Ben Elliott?

A Yes.

Q What is his race?

A Black.

* * * *

[11.65] Q Now, in July of '79, there was another special election at the local union, wasn't there?

A Yes.

Q You were a teller for that election; is that correct?

A Yes, I was.

Q And one of the posts that was up was the assistant committeeman from Zone 2, was it?

A It could have been. I don't know.

Q Do you recall that Harold Yost was a candidate in that election?

A Yes.

Q And the tellers found him eligible to run in that election?

A Yes. I think he run.

Q And the tellers found that he was the winner of that election; is that correct?

A I think so.

Q And after that Robert Coffey filed a protest of [11.66] that election, didn't he?

A That is a good question. I think he did. Yes, he did, yes.

Q Okay, and Robert Coffey contended that Harold Yost wasn't eligible because he wasn't working in the zone, didn't he?

A That much I don't know.

Q Well, you know that the International found Harold Yost not eligible, don't you?

A No, I did not know the outcome. I thought Harold Yost did win it. Harold Yost is something in the union now.

Q Take a look at Union 472 and let me ask you if you have seen that document posted on the board in the grievance office at the union? (Handing witness.)

A No, I didn't. I never seen this.

Q You never discussed with Harold Yost or Robert Coffey what the outcome was of the protest?

A No, I didn't.

Q Harold Yost is white; is that correct?

A Yes, he is, so is Coffey.

* * * *

[11.68] Q All right, let's talk about your correspondence with the International. Leon Lynch to whom you wrote, what is his race?

A Black.

Q And he is a vice president of the Steelworkers Union?

A No.

Q Do you know what his position is?

A I think he is vice president of the Human Affairs.

Q Frank Mont, what is his race?

A He is black.

* * * *

[11.69] Q After you wrote the letter that is the last page of that exhibit, what happened?

A I had an accident. Nothing.

[11.70] Q Did you ever hear from Frank Mont or Lynch?

A No.

Q You never got a letter from Frank Mont?

A Not after that, no.

Q Take a look at Union 463. Take a moment to read it if you want.

My question is: Did you receive that letter?

A This letter here? (Indicating.)

Q Yes.

A The last page of this is a different date on 9—

THE COURT: Exhibit 463.

THE WITNESS: This is the last letter. This is December 1st, 19—this is December 12th.

MR. SILBERMAN: That is right.

A Okay.

Q Did you receive that letter? If you want to take a moment to read it, go ahead.

(Pause.)

A No; I never received this letter.

Q. You never received it?

A Never.

Q Okay.

THE COURT: You were living at the address shown on the letter at that time?

[11.71] THE WITNESS: Yes, sir.

BY MR. SILBERMAN:

Q On page 2 of this letter, the top paragraph, Mr. Mont writes: "Before the meeting adjourned, I requested that certain allegations made by you and not explained to my satisfaction be investigated and you and I were to be made aware of the findings of such investigation."

Now, the allegations that Mr. Mont asked to have investigated concerned Donald Weldon failing a test on two occasions, didn't they?

A That was one of the allegations.

Q And wasn't that the one that he asked Yi Brown to investigate, to report back to you and to him on?

A Yes, yes.

Q And the reason he said he wanted that allegation investigated was because it was a civil rights matter and he was the Civil Rights coordinator; isn't that right?

A No. That wasn't established, no, it wasn't.

Q At the meeting, Mr. Mont told you that charges that didn't pertain to civil rights he couldn't handle because he wasn't the Civil Rights coordinator, didn't he?

A No, sir.

Q Didn't he tell you that you should go through [11.72] established procedures and explained what the procedures are?

A No, sir.

Q Now, you take a look at the second paragraph of that letter.

A Yes?

Q Which says: "I informed you and Brother Brewer of the procedure that has long been established in the district for bringing to the attention of the International union concerns and apprehensions of our members."

He didn't tell you about that at the meeting?

A He didn't tell me this, and I'm just seeing it for the first time.

Q Okay, you are sure you didn't receive a copy of this letter?

A Just as sure as I am alive.

Q All right, let me ask you to take a look at a document which you don't have, which I will bring to you, which is Defendants' Exhibit 464. (Handing witness.)

Now, that is another copy of the same letter, isn't it?

A Yes.

[11.73] Q And on the bottom of page 2, the signature there is your signature, isn't that it?

A Yes.

Q And the writing on that page is your writing, isn't it?

A You're absolutely right.

Q Now, you received a copy of that?

A I remember now.

Q And you sent a copy to the International Union?

A Yes, I did.

Q But it's still your testimony that Frank Mont didn't tell you anything about going through the procedures at that meeting?

A He didn't then and he didn't now and he still hasn't showed that yet.

Q At the meeting with Frank Mont, you told him that your charges didn't relate to black and white matters, didn't you?

A No. No, I did not tell him that. He said, if this was all discrimination, he would not hear it and I told him he would hear it—I would appreciate it if it be recorded, anyhow, that we did have a meeting.

Q Well, let me read your deposition excerpts and ask if you gave this testimony?

[11.74] This is page 425.

"Question: He said, if it was discriminatory——

"Answer: He wouldn't have anything to do with it if it was a black or white issue.

"Question: Did he say who would?

"Answer: No. I told him these charges I'm bringing don't have anything to do with black and white."

BY MR. SILBERMAN:

Q Did you give that testimony, Mr. Whitfield?

A Yes, I gave you that testimony and you went off the record when I explained to you because I wanted to get his attention.

Q Well, there's no indication on that page of any discussion off the record, is there?

A No, there's no indication.

Q Now, you discussed the charges you were making against Mr. Pilotti and Mr. Brown with both blacks and whites alike because you believe they pertained to both races, didn't you?

A No.

Q Well, let me ask you, if you gave the testimony that's shown on page 427 of your deposition, Mr. Whitfield? Let me start on page 426 to give context, [11.75] on line 17. You're in the middle of an answer. You said, "I told them if it takes an impeachment—are you willing, in case I wanted to get some petitions here, are you people going to back me up even if it means impeachment?

"Question: Who did you say that to?

"Answer: Everybody that I talked to. Leroy Davis. He was helping me——

"Question: Leroy Davis, Jr.?

"Answer: Yeah.

"Question: Did you say that to anybody else?

"Answer: Jim Brewer. He was with me. My point is, everybody. Everybody that I seen.

"Question: Do you recall specifically who you said that to?

"Answer: No.

"Question: Were you saying this to blacks and whites alike?

"Answer: Yeah. Because it pertained to everybody."

BY MR. SILBERMAN:

Q Did you give that testimony, Mr. Whitfield?

A Yes, I did.

Q All right. Now, one of the matters that you [11.76] discussed at the meeting with Frank Mont concerned moving the truck washing job into the truck driving subdivision; is that correct?

A Yes.

Q And what happened there was that the company decided it wanted to move this truck washing job, which had been a pool job, into the truck driving subdivision; is that correct?

A I don't know this.

Q You were told——

A I know that it was done.

Q You don't believe that that was done for racial reasons, do you?

A How do you mean that?

Q Do you believe that the reason the company did this was to discriminate against or disadvantage black employees?

A Well, the blacks is in the pool and if it's moved, the union—they do it without no question. It's done. It's moved into a unit.

Q I don't believe you answered my question.

Do you believe that the reason the company moved the truck washington job into the truck driving subdivision——

A It's white motivated. No, I don't.

[11.77] Q Now, the person who told you that the reason this move was being made was to provide work for truck drivers if they lose their license or they get drunk—that was Tom Franklin, correct?

A Yes.

Q And he's the superintendent of the department?

A Yes.

Q And he said this at a meeting of all the truck drivers, a weekly safety meeting, correct?

A Correct.

Q Now, the union filed a grievance about the move of the truck washer into the truck driving department, didn't it?

A No.

Q Well, the union negotiated an agreement, which provided that all incumbents in the truck driving subdivision wouldn't have to take the truck washing job, didn't it?

A No.

Q Take a look at Defendants' 372, Mr. Whitfield.

Did you ever see that agreement before?

A No.

Q Was it posted in the department?

A No, not while I was there, no.

Q You were a shop steward, correct?

[11.78] A Yes.

Q And Gerald Johnson, he was in the area at the time?

A Yes, he was.

Q He was assistant committeeman?

A Yes, he was.

Q He was a friend of yours?

A Yes.

Q He never showed you this agreement——

A I was out of the department because the truck washing was put into the department, into the subdivision and I left the department as a result—because the union had already okayed it without a prior meeting. It came to us as a shock, and when Tom Franklin spoke to us, it was already in effect.

Q Now, at the bottom of that agreement, it says, it is also agreed that any grievances relating to above subject are closed and settled without any monetary liability on the company's part.

Does that refresh your recollection as to whether any grievances were filed about moving the truck washing job into the truck driving subdivision?

A No, it doesn't.

[11.79] Q As far as you know, there weren't any?

A That's what I said.

Q Now, you testified last time that this truck washer incident was your prime concern at the time you met with Frank Mont. Do you recall that?

A Yes.

Q But at the time that you met with Frank Mont, you [had] been out of the truck driving subdivision for a year, hadn't you?

A I don't think so. I was out a considerable time and I remember now, I had sent letters and I didn't get an audience until so much time later.

Q Well, take a look at your seniority service card, which is the first of the Plaintiff-Whitfield exhibits.

Your employee record card will do. That shows that you went——

A March of '76.

Q That shows that you went to crane operator for the time in March of '76; is that correct?

A That's correct.

Q And you wrote your first letter in August of '77; is that correct?

A That's correct.

* * * *

[11.124] WILLIAM J. WHITEMAN, sworn.

DIRECT EXAMINATION

* * * *

[Q] By whom are you presently employed, Mr. Whiteman?

A Lukens Steel Company.

Q And you have worked as an assistant and a staff representative in the labor relations office since 1971?

[11.126] Q Now, during the period from 1951 when you became a night clerk in the employment department up through 1971, were you involved in hourly hiring and transfer in the employment department?

[11.127] A I didn't start to do any hiring or interviewing until 1952.

Q Okay, from that point——

A Wait a minute, I'm sorry, 1954.

Q So it is 1954 when you were involved with hourly hiring and transfer in the employment department?

A Yes.

* * * *

[11.137] Q Am I correct that the determination of an employee's eligibility for transfer was made on the basis

of his attendance record, disciplinary record and test scores?

A Yes.

Q And over the course of years that you were involved in hourly hiring and transfer, is it correct [11.138] that the emphasis changed such, that that discipline and attendance records became less important, while test scores became more important?

A Test scores did become more important.

* * * *

[11.143] Q Mr. Whiteman, during your tenure in the employment department, the Wonderlic test was used to determine eligibility for transfer, wasn't it?

A Yes.

Q And you don't know, do you, if the Wonderlic was used or not after you left the employment department in 1971?

A No; I don't know that it was used.

Q Pardon me?

A I don't know.

THE COURT: It will be helpful if you could keep your voice up. Everybody in the courtroom [11.144] was dying to hear your every word. The last few words were escaping us. Talking into the microphone.

BY MR. BORISH:

Q Was the Wonderlic still being given at the time you left the employment department?

A No.

Q So your testimony is you know it had stopped at that point?

A At the time I left, yes.

Q Would you take a look at Plaintiffs' Exhibit 38, please.

(Pause.)

A I assume you are talking about the last sentence of the first paragraph.

MR. BORISH: Well, I would like Mr. Whiteman to read it. I showed him this document at a deposition, and there is some deposition testimony that relates to it.

THE WITNESS: All right.

BY MR. BORISH:

Q Do you remember at page 68 of your deposition I showed you this document and I asked you: "From looking at the document, does this refresh your recollection at all, anything in the document refresh your recollection as to whether the Wonderlic would still be used as of [11.145] the date of the document?"

Your answer was: "I don't know whether it was used or not after that point."

A Well, I think I just answered that in the same context. I don't know whether it was used after that.

Q I see.

THE COURT: It was being used at the moment you left, and you weren't sure whether it might have been used thereafter.

THE WITNESS: True, yes.

MR. BORISH: Okay.

BY MR. BORISH:

Q While it was being used, there were certain cutoff scores, weren't there, on the Wonderlic which employees were required to have in order to gain entry into various jobs and subdivisions at Lukens?

A Yes.

Q And in fact from 1956 until whenever the Wonderlic ceased to be used until you left the employment department were you responsible for telling your subordinates what those cutoff scores were to be?

A Yes.

Q Now, when Mr. Harry Morton was your boss, was he the person who determined the cutoff scores?

A At that time, yes.

[11.146] Q And later on when Mr. Domangue became your boss, did he determine the cutoff scores?

A Yes.

Q Thereafter when Jim Hall became employment manager he didn't make any changes in the cutoff scores, did he?

A Not that I'm aware of, Mr. Borish.

Q There was also another test known as the SRA Mechanical Test, which was given during your years in the employment department, wasn't it?

A Yes.

Q And was that test given to all applicants for trade and craft jobs and apprenticeships?

A Yes.

Q That was given at least from 1956 until you left the employment department, wasn't it?

A I don't know when it stopped. I have no idea when it was stopped.

Q Was it given as of the time you left the employment department?

A Not that I'm aware of, no.

Q Page 93 of your deposition I asked you: "With respect to trades and crafts you said that in 1956 the SRA Mechanical Test was given to all applicants who transferred to trades and crafts?"

[11.147] Your answer was, "Yes."

A Yes.

Q Then I said: "Now, did that continue up until the time that you left the employment department?"

You said, "Yes."

Does that refresh your recollection?

A All right, I stand corrected.

Q Now, that test was a written test, wasn't it?

A How do you mean written, Mr. Borish?

Q In words.

A There were words.

Q You have to read and have to write to answer the test?

A Yes.

Q Was the same cutoff score on that test required for admission to all trade and craft jobs and apprenticeships? Was there one single score required?

A For apprenticeship?

Q For all trade and craft jobs and apprenticeships; was there one single cutoff score that applied?

A I really can't remember. If you have it——

Q Let me take a look at your deposition. Page 93 I asked you:

"Question: Was there a cutoff score on the SRA Mechanical for admission to trades and crafts and [11.148] apprenticeship?"

And you said, "Yes."

Then on page 94 I asked: "Did that cutoff score apply to all trades and crafts? Was there one cutoff score for all trades and crafts and apprentice or were there different cutoff scores for different trades?"

Your answer was: "The same score applies in all cases."

Does that refresh your recollection that there was one cutoff score?

A One cutoff score.

Q And that score remained the same single absolute cutoff score until the time at least you left the employment department; isn't that right?

A Yes.

Q There was another test known as the SRA non-verbal which was also administered by the employment department, wasn't there?

A Yes.

Q And that test was used by translating the non-verbal score into a Wonderlic score, wasn't it?

A True.

Q And you had a correlation table to make those translations of SRA non-verbal into Wonderlic scores?

[11.149] A Yes.

Q That test, the SRA non-verbal, was given very rarely, wasn't it?

A Yes, it was.

Q Back in 1956 am I correct that as best you can recall it was given only five to ten times a year?

A I think I testified to that before, yes.

Q Yes, you did. And am I also correct that up until the time that you left the employment department from 1956 on the use of that test decreased in frequency?

A Will you repeat that?

Q Am I correct that between 1956 and 1971 when you left the employment department the use of the SRA non-verbal decreased in frequency?

A Yes.

* * * *

[11.173] NORRIS DOMANGUE, sworn.

DIRECT EXAMINATION

* * * *

Q Are you presently employed by Lukens Steel Company?

A Yes.

Q And am I correct that you first joined Lukens in 1957?

* * * *

[11.174] A Yes.

Q And at that time you were the assistant employment manager?

A Yes.

Q Did you become employment manager in 1959?

A Yes.

Q And then in about 1966 or '67 were you named to the position of Manager of Personnel Administration?

A Yes.

Q And that is your present position now?

A Yes.

Q As Manager of Personnel Administration, what do you oversee? What functions of the company do you oversee?

A The Employment Department, the EEOC, the safety and plant protection and development and training.

Q EEOC is Equal Employment Opportunities?

A Yes.

* * * *

[11.183] Q Now you are aware, aren't you, that in the mid-1970s a black foreman at Lukens had the letters "KKK" marked on his workpapers?

A Yes.

Q Are you aware his name on his hard hat was crossed out and the words, "Uncle Remus" written in?

A Yes.

Q You're also aware, aren't you, within the last five or six years a burning cross was put in an area where blacks would normally go to change?

A Yes.

Q Mr. Demangue—

THE COURT: I would bet that last question is not strictly accurate. I doubt if a burning cross was put there. The cross may have been burned there.

MR. BORISH: Yes.

* * * *

[11.187] Q Now, Mr. Domangue, you've been involved in overseeing testing at Lukens since you've been an employment manager, haven't you?

A Yes.

Q Can you take a look at Plaintiffs' Exhibit-378? That's a copy of the Wonderlic test that was used at Lukens?

A Yes.

Q And that was used as a selection device through various hourly jobs?

A Yes.

Q Wasn't it also used as a selection device for filling foreman's vacancies?

A Yes.

Q Was the use of the Wonderlic test stopped at Lukens sometime after the 1971 Griggs vs. Duke Power, Supreme Court decision?

A I'm not sure of the exact stopping date, but I'm sure it was not stopped after the Griggs case.

Q Am I correct that the use of the Wonderlic was stopped at the same time at Lukens for all purposes, including its use as a promotion to foreman?

A I'm not sure about that.

[11.188] Q On page 93—92 and 93 of your deposition, I asked you, "Do you know when you stopped using the Wonderlic for promotion to foreman," and you answered, "Not by date. It would be after the Duke Power case."

I asked, "As best you can recall, did you stop using the Wonderlic for all purposes at that time, or did the use of the Wonderlic for promotion to foreman continue for some period after it was not used in other areas," and you answered, "No. We phased it out for all purposes," and I asked, "At the same time?" You answered, "Yeah."

Do you remember that?

A Yes.

Q Was that testimony accurate when you gave it?

A To the best of my knowledge, yes.

Q While the Wonderlic test was in use at Lukens, there were certain minimum scores which were required in order for people to be admitted to various jobs and subdivisions; isn't that right?

A Yes.

[11.189] Q Can you take a look at Plaintiffs' Exhibit 10, please, and if you would turn to the last two pages which have been stamped as 12 41 72 and 12 41 73,

do you recall how it was that those Wonderlic scores were chosen?

A No. My best recollection is that they were developed, not chosen, by using the national published norms and percolating in between skills.

Q Am I correct that those nationally published norms were put out by the test publisher, Mr. Wonderlic?

A Yes.

Q And was there a list of jobs that he put out and a suggestion of what the scores should be?

A Yes.

Q And he also reported, didn't he, that the test was only accurate, plus or minus two by the direction—

A Yes.

Q What did you do where there was no expressly comparable jobs in the nationally published material?

A The degree to which Lukens' jobs could be compared substantially with those categories that had national norms to them, we adopted those.

And others, we took estimates between what we would assume to be related skills.

* * * *

[11.190] Q You were looking at Plaintiffs' Exhibit P-10. Do you have that in front of you, again, the last two pages? Am I correct that where a particular job constituted a training for some higher job, the cutoff score on the Wonderlic for the higher job was also required for the lower job?

A Yes, in general.

Q Was there ever any study or investigation at Lukens to validate the use of any particular score on the Wonderlic, as a requirement for any particular job?

A We did some analysis by skills and the Wonderlic cutoff scores, but we became concerned about turnover in some of the areas and we wanted to see if it had some relationship. Those are not validations in the strict interpretation of the sense of analysis.

Q Well, can you tell me any specific study or investigation that was ever done at Lukens to validate the use of any particular score for any particular job and can you tell me the job

A Yes. Crane operators.

Q Other than crane operators, was there any study [11.191] or investigation ever done along those lines?

A Not that I can be specific about now. I can't think of any.

Q Was there ever any study of the Wonderlic at Lukens, which showed the Wonderlic to be a valid predictor of success on any Lukens' job?

A No.

Q But there were studies, weren't there, that showed that the Lukens—it showed that the Wonderlic was not a valid predictor of success for jobs at Lukens; were there not?

A There was a study that came to those conclusions, yes.

Q Well, there was more than one study, wasn't there, that came to those conclusions?

A No. I'm only aware of one.

Q Well, first, let's take a look at P-8, if you would. That's a letter from Mr. F. Clamb to Mr. Vanderveer?

A Yes.

Q Dated April 8th, 1952.

Can you read it and tell me if you have ever seen that before?

A No, I have not seen this letter before.

Q The record should note that there is an apparent [11.192] draft of that letter attached to Exhibit P-8, which states that the Wonderlic was one of the tests used in determining correlation results with the followup report—the followup report was a supervisory evaluation; was it not?

Q Can you turn to P-13, please?

A I might add that that letter—that correspondence

to which you're referring is before my employment at Lukens.

Q I understand.

P-13 is that crane operators' study about which you spoke earlier; is it not? Is that right?

A Yes.

Q And that study was done in 1964, wasn't it?

A Yes.

Q And turning to page 3, the intelligence test that is referred to is the Wonderlic, isn't it?

A Yes.

Q And you read this report back in 1964 when it was prepared, didn't you?

A Yes.

Q Now, let me direct your attention to the findings on pages—the bottom of page 3, over to page 4, which [11.193] states that there was no significant difference in the test results between the successful group of crane operator trainees and those who terminated, and it goes on to state that there was some indication of an inverse relationship, although the samples were too small to be reliable.

Did those findings have any broader implication for you beyond their relevance to crane operator trainees?

A No.

In specific instance of the crane tests, a tentative conclusion was that we will probably choose the overly qualified or overly intelligent people for a job that might be too confining, that came out of the reference of the inverse relationship.

There were other factors, obviously, that goes into a crane operator, but we would explore all of them.

[11.194] Q Did this study raise any question in your mind about the use of the Wonderlic for other hourly employees in the crane operators?

A No.

Q You knew back in 1964, '65, back in that time period, didn't you, that blacks were heavily concentrated in the lower job classes?

A Yes, there was an indication of that.

Q You also knew, didn't you, that the chief reason for this was the failure of black employees to meet the required scores on the Wonderlic test?

A The only test reflected educational facilities and other things.

Q I'm not sure I understand your answer.

Did you understand back in that time or did you know a chief reason for the concentration of black employees in the lower job classes, was their failure to make the required scores on the Wonderlic, to end up with higher job classes?

A One would say that, yes.

Q And in that time period, also, didn't you also know that th use of general intelligence tests like the Wonderlic, which had been developed on white, middle-class populations, penalized most black [11.195] employees?

A Not at that time, I didn't know that, no.

Q When did you first become aware of that?

A In and around the area of the Griggs-Duke Power case.

Q Not in 1971?

A No. I'm sure it was sometime prior to that when the general issue of testing and civil rights was being discussed nationally.

Q Weren't you aware of that back in 1967?

A I could have been.

Q Can you take a look at Plaintiffs' Exhibit-17? Does that refresh your recollection?

A Yes.

Q You were so aware back in 1967 then, weren't you?

A Yes.

Q Yet by 1968, hadn't the required Wonderlic scores for the job of pipefitter, rigger, painter, mechanical welder, mechanical repairman, bricklayer been raised two points higher than they were in 1963?

A I don't remember the incident, although we did discuss it during my deposition.

Q Why don't you take a look at Plaintiffs' Exhibits 25 and 26?

[11.196] These documents show required Wonderlic scores at Lukens for various jobs, don't they?

A Yes.

Q And take a look at the jobs on P-25, under the mechanical section.

And if you compare those scores to the scores on P-26 under the mechanical section, that is the first page on P-26—

A Yes.

THE COURT: It went up two points between 1963 and 1968, no doubt to account for inflationary trends.

BY MR. BORISH:

Q Mr. Domangue, even before 1968, you were—before 1968, were you worried about the validity of the test requirements for hourly jobs at Lukens?

A No.

Q You didn't want to shield those requirements from outside scrutiny, did you?

A No.

Q Well, didn't you urge your subordinates to steer grievances away from the testing area?

A I was more concerned about the abuse and misuse of testing and testing information that I was about [11.197] the validity of testing.

Q Let me ask you the question again, because I don't think I got an answer.

Didn't you urge your subordinates to steer grievances away from the testing area?

A I don't remember if I did or didn't.

Q Do you remember whether you urged subordinates to try to contain any arguments with opponents of testing to the validity of testing in general, as opposed to specific tests like the Wonderlic?

THE COURT: Other way around, I think, isn't it?
MR. BORISH: No.
THE COURT: What exhibit is it?
MR. BORISH: Take a look at Plaintiffs' Exhibit 19.

BY MR. BORISH:

Q First, if you look at the first page, does that refresh your recollection that you advised as to steer grievances away from the testing area?

A To keep unjustified criticism from testing, yes.

[11.198] Q And then over on the second page here see where you said, "We should stress where possible the validity of testing in the general area currently under criticism. We should try to avoid the specific involvements with specifically named tests, such as Wonderlic, et cetera."

A Yes. I think the document speaks for itself.

Q Is it still your testimony that at that time you were not informed about the validity of test requirements at Lukens for hourly jobs

A I'm not sure I understand the question. May I have it again?

Q At that point did you have any doubts about the tests that were used for hourly jobs in terms of the validity of those tests?

A I had doubts about misuse or abuse of them but not the principle of testing.

Q Well, did you have doubts about whether any of the specific tests that were being used were valid predictors of success on the jobs for which those tests were required?

A Not at that time.

Q Now, 1968 you learned, didn't you, that a study that had been done by two Lukens employees had shown Wonderlic to be an extremely poor predictor of later [11.199] job success measures, didn't you?

A Yes.

Q And those studies—that study is P-27, isn't it?

A Yes.

Q Mr. Copeland was Lukens test administrator at that time, wasn't he?

A Yes.

Q And he was there from 1968 to 1971?

A I'm not sure of the dates, but it is probably right.

Q Weren't you also advised in 1968 that Lukens was unable to support the Wonderlic as a valid placement and selection device for bargaining unit employees?

A That I was advised?

Q Yes. Did it appear that Lukens was unable to support the Wonderlic as a valid placement and selection device for hourly employees?

A Through that study, yes.

Q Let me ask you this: Were union representatives or the hourly work force in general made aware of the results of this study which is P-27?

A I don't know.

Q Did you have any desire to keep this study hidden or secret from the union or from the hourly work force in general?

[11.200] A Anything about which we are not sure until we have some firm conclusions on it we would probably keep under some discretion.

Q Did you want to keep from the union the advice that was given to you that appeared that Lukens was unable to support the Wonderlic as a valid placement and selection device for the hourly work force?

A The study that was conducted by two well-intentioned and reasonably qualified people but not as qualified as Wonderlic who had developed the test and which was used nationally.

There was a question in my mind as to whether this study compared authoritatively with the original studies.

Q Well, did you take a look to see how it compared after you got this study in 1968?

A No.

Q I am still not sure I got an answer to the question that I had asked, whether you wanted to keep the

results of this study secret from the hourly work force or the union?

A Not in the way it is phrased, no. We were not keeping it secret. We were not prepared to use it or publish it because we were not sure of its results.

Q Now, in 1971, did Mr. Copeland report to you, [11.201] do you recall, that there was a lack of sufficient evidence that intelligence was a relevant concept with respect to industrial job performance?

A I can't be specific about that, more specificness; but he had certainly reported something to that general nature, yes.

Q Take a look at P-39, if you would.

(Pause.)

You didn't agree with Mr. Copeland's assessment that there was a lack of sufficient evidence that intelligence was a relevant concept in industrial job performance, did you?

A No.

Q And in fact several months later didn't you decide that no tests that were then being used by Lukens would be abandoned until some superior substitute was found?

A I don't think it was that strong. I said that the concept of testing still had validity in my mind; that we should try to find as valid and as useful and acceptable testing as possible.

Q Take a look at P-41, please.

Does that refresh your recollection that in mid-1971 you decided that no current tests would be abandoned until a superior substitute was [11.202] developed, validated and instituted?

A Yes.

Q And was your decision followed?

A Yes. I can't explain the timing of it, but that is when we sought outside professional help to help us validate. We pursued it aggressively and as professionally as we knew how.

* * * *

[12.8] JAMES A. HALL, sworn.

DIRECT EXAMINATION

BY MR. BORISH:

Q Mr. Hall, I'll be asking you to refer to the documents in those two notebooks during your testimony.

Are you presently employed by Lukens Steel Company?

A I am.

Q What's your present position?

A Personnel Employment and Development Manager.

Q When did you start at Lukens?

A 1964.

Q And was your first position as an Assistant Employment Manager?

A That's correct.

Q And in 1966, were you promoted to employment supervisor?

A Yes.

Q And that point, you were in charge of the Employment Department?

A Right.

[12.9] Q What has the Employment Department overseen during the period that you've been in charge of it? What functions has it taken care of at Lukens?

A It's primary purpose is to recruit people from the outside, as well as to handle internal placements.

Q And has the office also overseen the company's equal employment opportunity efforts?

A Yes, it has.

Q Your present position as employment and development and training manager puts you in charge of the development and training office at Lukens, as well?

A Yes.

Q And that's a separate department from the Employment Department?

A That's correct.

Q And you achieved that position in 1973, did you?

A Yes.

* * * *

[12.20] Q You are also aware, are you not, that within the last two to three years several employees were [12.21] observed in the plant wearing arm bands that said, "KKK" on them?

A I have a vague recollection of that. I did not handle that incident.

Q You heard about it?

A I heard about it.

* * * *

[12.66] Q Let's put it into time context. Go back to P-[2]7, which was the 1968 study Mr. Copeland and Mr. Gary did on the Wonderlic.

A Yes.

[12.67] Q Now, do you remember that the criteria they chose to validate or invalidate the Wonderlic on were chosen because they were thought to be indicative of job success?

A They were; but when the study was set up, when the methodology of the study was set up, we knew at the outset the study was flawed. And it would be flawed from a statistical point of view.

The whole purpose of what we were trying to do was to get as quick an indication as to whether the Wonderlic appeared to be doing what we really thought it was doing.

Q Was it?

A Another conclusion was that it appeared it was not. However, I think one of the suggestions was that we should go further with a more detailed statistically pure study of that.

Q You continued at that point to use the Wonderlic as a cutoff requirement for entry into hourly jobs at Lukens, not to be hired or not the ones who were hired

to get into a job weren't there still different cutoff scores that were applied?

A We used the Wonderlic but in a much altered way following that.

Q You altered it for transfer purposes as well?

[12.68] A We lowered the cut scores is my recollection, the overall cut scores. We initiated—my recollection is a much more intensive use of the SRA; and in this same general time period—and I am not sure of my dates here—we lowered the cut score for hire at least three different times.

So the whole way we used the Wonderlic had changed. It was being used more as, let me say, an initial low-end screen in terms of reading ability.

Q Is there any written document that shows changes in the Wonderlic cutoff scores required for admission to trade and craft jobs?

A For trade and craft?

Q Yes.

A There was an earlier, I guess, reference yesterday to the fact that the Wonderlic had been raised. I think it was two points. I believe that it was in 1968.

That was a direct result of a negotiation where the trade and craft job classes had been raised. The purpose of raising the Wonderlic at that point for just those specific jobs was in order to remain consistent with the way we were applying the Wonderlic. That was the only time in my recollection we have ever raised the Wonderlic in that time period.

[12.69] Q Are you saying you applied the Wonderlic —you needed the same Wonderlic score as a job class of the job for which the person was applying?

A Come again?

Q You said you raised it two points because the job class was raised two points.

A Yes, that is correct.

Q Did you ever determine there was a correlation or relation between job class level and the points necessary on the Wonderlic score—

A Oh, yes.

Q —to operate successfully in that job?

A That was the whole basis of the Wonderlic, Mr. Borish.

Q Did you ever have any study at Lukens which showed you that?

(Pause.)

A Well, let's see, this goes back to what we were just talking about a moment ago, the 1969 study which —and I think I mentioned at the deposition that I had recalled—at least I felt I had recalled shortly after coming on board with Lukens having seen part of a similar study.

The bottom line of that study, if you can use that term, was to set the base for [12.70] Wonderlic, in fact measuring to some degree the mental effort required in the hierarchy of job classes.

It was all correlated with the Wonderlic normative data that he published. He had a great deal of normative data that dealt with Wonderlic scores for various occupations.

All of that dovetails together. So I think the way to answer you question is that the Wonderlic score was equated with job class ranks.

Q Are there written documents that show that there are studies at Lukens equating the Wonderlic score with job classes? Do you remember any written document at Lukens that showed that as the Wonderlic score rose that was able to predict better success on any job at Lukens?

(Pause.)

A Not specifically, not the way you explain it, no.

But the base of the original intent of the Wonderlic—and I have not been able to lay my hands on that—but it was all based on jobs at Lukens and what will be

required on the Wonderlic in comparison with the normative data published by Wonderlic.

Q Let me ask you: Was more mental effort required [12.71] for the trade and craft jobs after they were raised to job class levels?

A I don't recall that, Mr. Borish. I don't recall what factors went up when they raised the job class.

Q You are aware, aren't you, that this 1968 study that was done showed extremely poor predictability on the part of the Wonderlic in measuring later job success. Weren't you aware of that?

A Yes. I also told you we knew the study was flawed. It did not prove that. It was an indication of that.

Q You knew that before the study was done?

A We knew that when we were setting up the methodology of the study.

Q Did the study raise any question in your mind about the usefulness of the Wonderlic as a requirement for holding hourly jobs at Lukens?

A It did.

Q Indeed, didn't you conclude that it appeared that because of this study, after reviewing this study, you were unable to support the Wonderlic as a valid placement and selection device for hourly employees?

A That was Mr. Copeland's conclusion, I believe, in a study but only one conclusion.

[12.72] Q Did you agree with that conclusion that it appeared you were unable to support the Wonderlic as a valid placement and selection device for hourly employees?

A I agree; and, as you know, I later issued the directive to cease using it.

But one of the other conclusions was that further research was required and we should perhaps go through an empirical study, further research on the Wonderlic. We later concluded that was just not worth the effort.

Q And you didn't do it?

A No, sir, we did not.

Q It took you three years to reach that conclusion, more than three years?

A Well, as I mentioned a few minutes ago, upon the completion of Mr. Copeland's report we started using the Wonderlic in a significantly different way.

So we acted on the results. Then later we stopped using the Wonderlic scores for any selection purposes. We kept on administering the Wonderlic test purely to collect the test scores with the thought of then going through this empirical study. But we gave that up.

* * * *

[12.88] Q Mr. Hall, in 1973, Lukens started to use a test known as the Shop Math Test; did it not?

A 1973?

Q Yes.

A Yes.

Q And that test was first used for entry into the electric helper?

A Yes.

Q Who is Mr. Robert Kenna?

A In 1973, he worked for Lukens. In '73, I believe I'm correct—I think he was down in development training.

[12.89] Q He was a training coordinator, wasn't he?

A He was at one time. I'm not certain about the date.

Q Did you consider him to be competent in the field of testing?

A No. He worked under direction.

Q I see.

Did you solicit his advice with respect to the shop math test?

A I don't recall that.

Q Well, take a look at Plaintiffs' Exhibit 43, if you would.

You said he worked under direction.

Do you remember whether somebody directed him to give you his thoughts about this test, or whether he just happened to offer them?

A No. I'm sure he just didn't offer them at this point in time.

Well, above development training, he did have a responsibility in the apprenticeship training.

I think now in looking at this, that that's probably the connection in which the test was given to him, to critique of his knowledge of what apprentices had to learn.

Q I see that test—that shop math test at some point became a requirement into entry for all or just [12.90] about all of the Lukens trade craft jobs, didn't it?

A Into the—following 1973, yes, it was refined and extended to the trade craft areas, in which we were doing any staffing.

Now, we weren't staffing all of them.

* * * *

[12.112] RAMON LEE MIDDLETON, sworn.

* * * *

[12.133] Q Did you file any grievance over the fact that you weren't placed where you thought you ought to be placed on the roster?

A No.

[12.134] Q Why not?

A The union—they weren't accepting any grievances on the strand cast job because there had been an agreement between the company and the union and I think that agreement consists of 180 days that there would be no grievances filed.

* * * *

[12.135] Q Now, in this set of documents, you name not only the company, but the union as a defendant or respondent.

Why is it that you named the union as a respondent?

A Well, during this time I had met with various union officials at the union hall and to no avail.

So one particular day I was over there and our staff man, "Horsey," was there and we had a heated argument and he shoved his finger into my face and told me that I should be satisfied that I have a job at Lukens Steel and to accept what I had.

[12.152] Q Mr. Middleton, the time of all the controversy [12.153] over the strand cast manning, your committeeman was Carl Cannon, wasn't he?

A I think so.

Q And you've described him as a particular friend or a real good friend?

A An associate.

Q You disagree with the terms of a particular friend?

A No. I can use either one at various times.

Q You agree that he's a real good friend of yours?

A At times.

Q You've also described him as a very good committeeman, haven't you?

A Yes.

Q And you said that you respected him to the utmost as a man and as a union man, haven't you?

A Right.

Q Throughout all this controversy, you were in regular contact with Mr. Cannon about this problem?

A Right.

* * * *

[12.169] Q Now, on the question of whether you could file a grievance in order to get in, you said that you understood there was an agreement that no grievance could be filed for 180 days after the start-up of strand cast. You never saw such an agreement, did you?

A No, I didn't.

Q You understood that that had been signed by Michael Reach?

A Yes.

[12.170] Q And you also understood that it applied to everyone in the union and to the local union as an organization; as well?

A Yes.

Q And that, of course, means black and white people alike?

A Yes.

* * * *

[12.174] Q Now, you described a conversation with "Horsey" Zitarelli about this—"Horsey" is a staff representative; is that right?

A Right.

Q He was at that time?

A Right.

Q And you said that Mr. Zitarelli shook his finger at you and he said you should be glad——

THE COURT: We all heard that and this shouldn't be cross-examination. This is repetition.

What's your question?

BY MISS CLARK:

Q Mr. Middleton, you recall testifying at your deposition about that conversation with Mr. Zitarelli?

A Yes.

Q Do you recall saying in that deposition that your [12.175] conversation with him was that you couldn't grieve, because of the agreement that no grievances would be filed for a hundred and eighty days?

A Right.

Q And do you recall that what he said was that you didn't have a chance with this argument, so you might as well forget it?

A Something of that nature.

Q And you didn't tell me anything about him saying that you should be satisfied you have a job with Lukens, did you?

A I don't recall.

* * * *

[12.179] THE COURT: Was Mr. Cannon prejudiced against you on racial grounds?

BY MISS CLARK:

Q In the way he handled your problems relating to strand cast?

A Mr. Cannon's black.

THE COURT: That doesn't answer the question necessarily.

You would agree he was not prejudiced against you because of your color?

THE WITNESS: I would agree.

* * * *

[13.4] WILLIAM R. MAYO, Sworn.

DIRECT EXAMINATION

BY MR. EWING:

Q Mr. Mayo, are you currently employed by Lukens Steel Company?

A Yes, I am.

Q Are you taking off work today to testify?

A Yes, I am.

Q When did you start at Lukens?

A April 20, 1959.

* * * *

[13.5] Q In 1964 you transferred to a job of heat observer?

A Yes, I did.

Q And at that time were you the only black heat observer at Lukens?

A Yes, I was.

Q According to Exhibit P-493 a heat observer is seniority subdivision number 44, which we have the 1978 employment composition on this chart.

Now, as an observer did you have a daily logbook?

A Yes, we did.

Q What was the purpose of that book?

A Well, the purpose of the log was to pass on to the observer that was coming on behind you what had transpired that day and also to give the supervisor the things that had happened that day in the way of whether or not you had any problems or not, and this is what was passed on to the next person.

Q Where was the book kept?

A We kept it at the NAB building. It was in one of [13.6] the booths that were used to read the charts for the furnaces.

Q Did you find writings in that book that weren't related to the work that you were doing?

A Yes, I did.

Q What were they?

A Well, it was mentioned in the book that Bill [Mayo's] parents must have been gorillas because he sure looked like a monkey.

Q Did you complain to anybody about that?

A Yes, I did. I told my immediate supervisor, Charles Burke.

Q Did he do anything about it?

A Well, he put a notation in the book that he wanted this practice to cease.

Q Did it cease?

A Well, for a few days and then it started up again.

THE COURT: When was this approximately?

THE WITNESS: This was approximately in 1964.

THE COURT: Thank you.

BY MR. EWING:

Q Did you do anything further about it?

A Well, I just tried to do my job.

Q Do you have any reason to believe that Mr. Burke [13.7] knew that it was continuing?

A Well, evidently because it was a daily chart that was kept and he read the book every day.

Q How do you know he read the book every day?

A Well, he would put his signature in and leave messages for the shifts, what he wanted them to do.

Q If you wrote comments in there, would he respond to them?

A Yes, he would.

Q Did you complaint to the union about this problem?

A Yes. I talked to Mike Reach, and I told him what the problem was. And he said let him work on it and he would get back to me.

Q Did he get back to you?

A No. I am still waiting on that telephone call.

Q Maybe we can ask him today.

THE COURT: You don't think you really will get it?

THE WITNESS: No, not really.

BY MR. EWING:

Q Did the union have any general reputation in the plant with respect to its handling of problems of black employees that you were aware of?

MR. SILBERMAN: Objection, Your Honor, on two grounds.

[13.8] THE COURT: As of what time does this question relate to?

MR. EWING: It relates at this point as of 1964.

MR. SILBERMAN: Two grounds. First under the Federal Rules of Evidence reputation testimony is not admissible. Second even if it were no foundation has been laid for this witness' knowledge.

THE COURT: Both objection are noted and overruled.

Proceed.

THE WITNESS: I would say that from all the conversations that I have had with all the workers and what I saw myself that the wheels of justice seemed to move quite slow when it involved the black worker.

[13.9] Q Was that different from the way they moved when it involved a white worker?

MR. SILBERMAN: Objection.

THE COURT: Objection overruled. You have a continuing objection.

MR. SILBERMAN: We also have a continuing objection as to the relevancy of these?

THE COURT: Yes, you may.

BY MR. EWING:

Q What was your answer to that question?

A I said, yes, they speeded up when it involved the white worker.

Q Did you discuss the union with a man named Bob Player?

A Yes, I did.

Q Did he have anything to say about it?

MR. SILBERMAN: Objection, your Honor, hearsay.

THE COURT: Overruled. It is just background. Doesn't have much to do with this case.

THE WITNESS: Well, Bob is one of the other older workers at the open hearth pits.

He and my brother-in-law, Harmon Parker, felt that by going to them, the workers had been there for a while, but they could give me some knowledge as [13.10] to how my approach to certain things should be and I asked him about that and Bob, in the course of the conversation, mentioned that in some instances, the wheels of justice move very slow when it involved black workers.

BY MR. EWING:

Q Has the reputation of the union for handling complaints of black employees changed since the time, 1964, 1965?

A I would say, in some respects it has and in other respects it hasn't.

Q Would you explain that, please?

A Well, on some things, where it comes to a black and white having the same complaint, they seem to speed up a little.

And when it's just a black by himself, we go back to the old cliche, well, I'll get back to you.

That type of approach.

Q Now, the remarks in the long book of the observers that you described, how long did you continue to find that kind of remark in there?

A Well, it was on a periodic basis. It was not a weekly thing. I assume the same person was doing—or persons.

Q How long did they continue to be there?

[13.11] A Well, as long as I was in that unit.

Q Did you ever hear of anyone being disciplined for them?

A No, I didn't.

Q Did you ever hear of any other action being taken about it other than that one comment that Mr. —

A Well, other than the one message that Mr. Burke left in the book, nothing else.

* * * *

[13.25] Q Now, on January 3, '77, what was the problem there?

A Well, again we were working the 11:00 to 7:00 shift. I made two electrodes up when I came in, which was 11:00. And I had those made up by about approximately 11:20.

I was putting lime in the furnace when foreman McLucas came over and informed me that he wanted another electrode made up. I told him that it was a policy to make two, and that is all I was going to make.

I was subsequently written up for this again.

Q Did you know of him requiring other helpers to make up more than two electrodes?

A No.

Q Now, on January 8, 1977, what was the problem there?

A Well, we were working on the 7:00 to 3:00 turn. The furnace was ready to tap at approximately 7:01.

There was no hot coat there. So on the furnace that [13.26] I was working on it was possible to tilt this furnace back to a degree where the steel would not run out if you took the plug out. And this is what I did, and I was written up for this too.

Q Was that also by McLucas?

A Yes, it was.

Q Do you have any reason to believe that McLucas was discriminating against you on account of your race in these disciplines?

A Well, when McLucas was put on foreman there were certain remarks made that he was out to get certain people and Bill Mayo, Lawrence Hubert happened to be two of them. And Lawrence Hubert and Bill Mayo happened to be black.

Q Were some of them white also?

A No whites were mentioned. He mentioned two names.

Q Now, looking at P-893—before that, did you complain to the union about any of this?

A I filed a harassment suit against Gary McLucas with "Yi" Brown.

Q When you say a suit, do you mean a grievance?

A A grievance. A letter was sent down, I assume, because Mr. McLucas started acting almost human for the next week or so.

Then the whole thing started again.

[13.27] In the interim I took another job, which was the CAB operator. So I didn't come in contact with is this person other than I went on the floor or he came into my unit. So I didn't pursue it any further.

Q Did you ever see any letter?

A No. I was under the assumption that beings the harassment stopped that something had been sent.

* * * *

[13.52] Q You didn't go to many union meetings?

A I still don't.

Q And you never ran for or held any union office, did you?

A No, I didn't.

Q The only people that you have ever spoken to about the job the union does for black employees are Mr. Plater and your brother-in-law; is that correct?

A That is true. They were two workers in the open hearth, and I started in open hearth. And these were the men that I went to for advice.

Q And you have never spoken to any white employees about how they feel the union does for them in handling their grievances, do you?

A Well, I didn't feel it was in my place to go around questioning.

[13.53] THE COURT: Just answer the question.

THE WITNESS: No.

BY MR. SILBERMAN:

Q Now, while you have been in the open hearth Cookie Cannon was an assistant committeeman for a number of years; is that correct?

A Yes.

Q And then he became a committeeman for a number of years after that?

A Yes.

Q He is black?

A Yes, he is.

Q Richard Jacks was an assistant committeeman after Cookie Cannon?

A Yes.

Q He became a committeeman; is that correct?

A Yes, he did.

Q Were you here yesterday? Is that the same Mr. Jacks who testified?

A Yes, it was.

Q Now, you knew Jim Brown, didn't you?

A Yes. I knew Jim personally.

Q Used to talk to him quite frequently, didn't you?
A Yes, I did.
Q He would ask you if you had any problems?
[13.54] A Well, not all the time. We talked politics and things of that nature.
Q Sometimes he would ask you if you had problems?
A Yes.
Q You would talk to him about problems you were having?
A That is true.
Q When you went to see Mr. Brown about the McLucas harassment, you weren't dissatisfied with the way Mr. Brown represented you on that occasion, were you?
A Well, I can say that that was the only time that I had any confidence in the union.
Q But you were satisfied with that occasion?
A Yes, I was.
Q And after you filed your harassment grievance—your grievance concerning Mr. Livingston, his harassment of you seemed to stop, didn't it?
A For a point in time, yes. I never came in contact with the man. I would say it did stop.

* * * *

[13.59] HAROLD K. BROWN, having been duly sworn, was examined and testified as follows:

* * * *

[13.93] Q Was the power sweeper job at the same job class that you had at the towmotor operator?
A Not at the time.
Q What was your job class at the time?
A My job was class 8.
Q And what was the power sweeper?
A At that time it was 7.
Q Did that change?
A Yes.
Q What happened?

A Three weeks later, they came to me and said, Brownie, we're boosting the power sweeper up to to class 8. I said, yes. I said, but you're still taking money out of my mouth.

Q Once it was boosted to 8, did you have to take the job?

A Yes, or I didn't have one.

Q Was the wage the same, the job class the same?

A Yes.

Q How about the premium?

A No.

[13.94] Q More or less, premium?

A On the sweeper was less.

Q Did you still have to take the job?

A I had to take the job.

Q Did you file a grievance about that?

A When the men in the refractory and fueling brick shed—when they went on vacation, I had the option of going back up there and he wouldn't let me, Bob Smith, so that's when I put a grievance in about me going back to the brick shed on vacation time.

Q Did Bob Smith say why he wouldn't let you go back up there?

A Well, the only reason why that he didn't let me go back—him and I couldn't get along and he was more or less just fighting against it. He was just trying to hold me back, that's all.

Q Did Bob Smith discriminate against you on the basis of your race?

A On that, yes. That's the reason why he held me down, because I would talk up.

Q Is the document in your file, marked P-1046, the grievance that you filed concerning this incident?

* * * *

[13.95] Q Mr. Brown, you're looking at a grievance which is labeled P-1046; is that right?

THE COURT: You are just asking about an exhibit number?

MS. GARTRELL: I want to make sure he is looking at the right one.

THE WITNESS: Yes.

BY MS. GARTRELL:

Q And this is the vacation grievance that you filed?

A Yes.

Q Was Bob Smith your supervisor at the time?

A Yes.

Q On the last page of this exhibit there is a statement that the disposition at the third step in July of '79 is that it was remanded to the second step so that proper procedures could be followed.

Was this vacation situation resolved to your satisfaction?

A Yes.

Q The next one is marked P-1047. What was this grievance about?

(Pause.)

A This grievance was about two operators were off sick on the power sweeper at the electric mill shop. [13.96] So that left me out doing all the operating.

At the time my long weekend came up, and I asked—in fact I asked my foreman. Then we went and seen Shaw. He's the superintendent at the electric mill shop. He said he couldn't say anything about the sweeper. We have to refer back to our superintendent Bob Smith.

So we did. And Bob Smith said: "No, we are going to leave the sweeper. We are going to use men."

So I said, "Why are you going to do that for?" He said, "We are not going to pay no overtime." I said, "Okay." So he said, "We are going to put men up there to sweep."

So what happened the first—it was on Friday, the first day, Friday. The put one man up there for an hour. The second day, Saturday, they put another man up there for a couple hours. Sunday they didn't put

anyone. Monday the general superintendent of the melt shop, Doug Edwards, came in and he said it sure looked like a hog pen.

So what happened is they got a laborer right out of the labor gang and put him on the sweeper, and three hours they put him on the sweeper. Well, before they did that they said, "Call Brown in." And [13.97] he said, "No."

THE COURT: Who said "no?"

THE WITNESS: Bob Smith, the superintendent of refractory and fuel.

THE COURT: To make a long story short, you filed a grievance and you got some money back; is that right?

THE WITNESS: It took one year.

BY MS. GARTRELL:

Q Did you have frequent job assignment and scheduling problems as long as Bob Smith was your supervisor?

A Yes.

Q Did you believe that those problems were related to your race?

A Retaliation on me.

THE COURT: The question is was it related to race?

THE WITNESS: Yes, that too.

BY MS. GARTRELL:

Q Did you state that to your union representatives when you made these complaints?

A Yes.

Q Do you know why the term race discrimination does not appear in either of these complaints?

[13.98] A It wasn't in there; that is all.

* * * *

[13.116] Q Let me ask you to take a look at Plaintiffs' 1048.

Take a look at the last page of that exhibit.

Have you read that, Mr. Brown?

A Yes.

Q This is another instance like that other instance, where you were called back up to run the lift truck in the brick shed during vacation; is that right?

A Yes.

Q And this was a result to your satisfaction, this grievance?

A I put it in, yes.

Q And it's been resolved satisfactorily to you; is that correct?

A Yes. Now, yes.

* * * *

[13.118] MICHAEL REACH, sworn.

DIRECT EXAMINATION

BY MR. EWING:

Q Mr. Reach, you were president of Local Union 1165, about 1946 to about 1954; is that right?

A That is about right.

Q When you first ran for president of 1165, whom did you run against?

A Thomas Jenkins.

Q Now, you were also grievance committee chairman from 1958 to 1960 or 1962, do you recall?

A '62, I think.

Q And from 1968 to 1970 you were also grievance committee chairman, weren't you?

A Yes.

Q Before you were elected president in 1946, you were a grievance committeeman for a couple of years also, weren't you?

A Yes.

Q And you have been a member of the negotiating committee for Local 1165, negotiating with the company while you were president and also for part of the 1962

negotiations and for the 1968 negotiations; is that right?
[13.119] A Yes.

* * * *

[13.125] Q They assigned blacks and whites to different jobs in different areas in the plant?

A Yes.

Q When did you notice that that occurred?

A I don't know when that came to my attention, but it was just my observation you could see—for instance, when I went into work, when I would go past the 140/206 shears I noticed that they were all blacks working there.

Q And it is your perception that that was due to the company's assignment of people to jobs, is it?

A Not particularly, just my observation. I noticed that they were all blacks.

Q Did this occur while you were president of Local 1165?

MR. SILBERMAN: What does "this" mean?

THE WITNESS: Did what occur?

BY MR. EWING:

Q Would you say the company discriminated in the assignment of jobs?

[13.126] MR. LANDIS: Objection. He can't put words in his mouth.

MR. EWING: I thought that was my question originally.

THE COURT: Everybody stop talking a moment.

Objection sustained. Clarify your question. I don't know what you're talking about.

Did you notice while you were president of the union that there were blacks in one department and whites in another department?

THE WITNESS: I noticed that while I was president of the union, before, and afterwards.

BY MR. EWING:

Q And was this due to the company treating black employees differently from white employees?

A I don't know if you call it treating them differently or what. This is the way they were hired. They were hired into a certain department. It was the employment office for the most part put it that way.

* * * *

[13.132] Q At any negotiations that you attended, did the union ever bring up the subject of segregated locker rooms?

A No, not to the best of my knowledge.

Q To your knowledge, did the union ever raise that issue with the company anywhere else?

A No. As far as I'm concerned, I didn't hear—don't remember any such discussions with the company.

Q In any of the negotiations that you attended, did the union make any proposals aimed at eliminating racial discrimination?

A We were concerned with the full membership when we talked about discrimination, in any way, shape or form, not particularly blacks or Slavish or Polish or anything else. We talked about the membership when [13.133] we talked about discrimination.

Q And you don't recall the union every arguing to the company that any proposals were intended to eliminate racial discrimination; is that right?

A Not as far as I can remember, no.

Q Or to provide more opportunities for minority or black employees?

A No.

Q Did you personally ever handle any grievances which alleged racial discrimination by Lukens?

A To the best of my knowledge, no.

Q Were you aware of any that were handled while you were grievance committeeman?

A No.

* * * *

[13.139] Q Take a look at Plaintiffs' 352, if you will, the 1968 proposals. And you stated that the references to discussed lockers——

A Yes.

Q —that didn't refer to segregated lockers?

A No.

Q Why is that?

A Well, about that time or maybe probably prior to these negotiations Josh Grove had gotten into this thing of desegregating the locker rooms. And he had done—and I give him full credit—he did a good job of desegregating all the locker rooms. He pretty much did that on his own.

Q It was your understanding by 1968 that the locker rooms were already desegregated or in the process of being desegregated?

[13.140] A Yes.

* * * *

[13.145] CHARLES WITTE, sworn.

DIRECT EXAMINATION

BY MR. EWING:

Q Mr. Witte, you work at Lukens now, don't you?

A Yes, sir.

Q And you have worked there since 1940 as a welder in the Welded Products Department except for your militatry service in 1942 to '46?

A Yes, sir.

* * * *

[13.146] Q You have been president of Local 2295 since 1964?

A '65.

Q '65, and a member of the grievance committee since 1958?

A Yes.

Q And you have been a member of the negotiating committee and have participated in all collective bargain-

ing agreements at Lukens at least since 1962, haven't you?

A Off and on, yes, not all of them.

Q Have you missed some of those negotiations?

A Yes. I think it was the '66 I was away. I attended some of the meetings, if that is what you are asking. You are asking if I attended all of the meetings?

[13.147] Q Well, I am asking basically you represented the union at those negotiations?

A Yes, I did.

* * * *

[13.156] Q And in any of the collective bargaining sessions that you've attended, from 1962 to the present, the one that you've attended, you don't recall anyone from either the company or the union raising any question about employment discrimination and racial discrimination?

A Not to my knowledge, no.

* * * *

[13.159] Q Do you recall in 1962, at the collective bargaining negotiations, any consideration of adding a non-discrimination clause to the collective bargaining agreement?

A No, I don't.

Q And you have no opinion on why such a clause was not added in 1962?

A If it were so, the only reason it wasn't there was by oversight by both parties.

* * * *

[13.166] EARL J. ZITARELLI, Sworn.

DIRECT EXAMINATION

BY MR. EWING:

Q Mr. Zitarelli, you were the staff representative of the United Steel Workers International Union who was responsible for Lukens from 1970 to January, 1977; is that right?

A Yes.

Q And as such you have handled collective bargaining negotiations on behalf of the steel workers with Lukens in 1970 and '71 and also in 1974; is that right?

A Yes.

[13.167] Q And you also handled grievances in the four-step and in arbitration during that period?

A Yes.

Q Looking at grievances first, you handled one grievance for a black man who had in your considered opinion suffered racial discrimination by Lukens; is that right?

A One grievance did you say?

Q Yes.

(Pause.)

A I accused the company of one grievance, yes.

Q And you believed he had suffered racial discrimination, didn't you?

A I did.

Q This involved an employee who had been assigned to a job that paid lower incentive pay than the job to which his seniority entitled him; is that right?

A That is right.

Q And you filed and you won a grievance on his behalf; is that right?

A I did.

Q Have you had a chance to learn any more about that grievance since your deposition?

A No, I didn't.

Q But to the best of your recollection this is the [13.168] only grievance you handled in which you allege that the company had engaged in racial discrimination; is that right?

A Well, I said that in my disposition. But since then I recall we had a fellow, a bricklayer or in the gang of bircklayers, that I accused of not being given the opportunity. I added discrimination before we went to arbitration.

Q What was the opportunity that he wasn't given?

A To be a bricklayer, first class bricklayer.

Q This was a grievance to get people admitted to bricklayer?

A Yes.

Q Was that about in 1973?

A I don't recall the time it happened.

Q Do you remember who the person was?

(Pause.)

A Well, when looking over the grievance, we accused the company of not being fair; but it was proven at that time the five white fellows and five black fellows were given the opportunity and passed it.

So with that testimony or with that evidence we withdrew the grievance.

* * * *

[13.170] THE WITNESS: Yes. I would like to say at this time I received a stroke in 1977 and affected my right side and my speech and my way of thinking.

THE COURT: You are doing fine.

* * * *

[13.171] Q Now, Lukens administered tests for various jobs, didn't it?

A Yes, they did.

Q And do you recall ever discussing whether any of Lukens tests discriminated against minorities?

[13.172] A No.

Q Or arguing to the company that they should be eliminated because they were discriminatory?

A No.

* * * *

[13.183] Q What steps, if any, did the union take to broaden seniority systems?

A Well, the main thing that we got there was the posting of the plant-wide posting.

Q And what was the purpose for the union's negotiations of plant-wide posting at Lukens?

A To give everybody an opportunity to move up.

Q To move into units where they hadn't been before?

A Before.

Q Further down in that paragraph, do you see a reference to making other adjustments regarding such matters as training?

A Where are you reading?

Q The same paragraph, the fourth paragraph of [13.184] that exhibit.

What, if anything, did the union do at Lukens with reference to matters regarding training?

A Well, I saw to it that we incorporated what we had from the international, such as on page 115, I believe——

Q Now, what's the document that you're referring to there, Mr. Zitarelli?

A That's the agreement dated August 1, 1971.

Q The collection bargaining agreement?

A Yes, it is. On page 115, we incorporated appendix H that provided for testing.

Q Do you remember anything specifically related to training?

A Yes, we did that too. There were certain jobs that we got—I believe truck drivers was one job that we took care of.

That they wouldn't have to take the tests, as such, but they trained for jobs, truck driving.

Q And that was something that the union did in negotiations at Lukens?

A Yes, it is.

Q And that same paragraph that you just had been looking at in P-63, the fourth paragraph there, do you see a reference to apprenticeships?

[13.185] A Yes.

Q What did anyone at Lukens do with regard to apprenticeships?

A I saw to it that it incorporated, in the same agreement, on page 117, 116, under the title, Appendix I, with

the apprenticeship training memorandum of understanding. I saw that it got into the agreement.

Q Did that have anything to do with opportunity for black employees at Lukens?

A It was opportunity for everyone at Lukens.

* * * *

[13.188] Q You were asked whether the union had done anything at Lukens to change seniority procedures to make it easier for black employees to move into all-white units.

Did the union do anything at Lukens to make it easier for all employees to move into any unit that they desired regardless of their race?

A Yes, for all of the employees. We never for [13.189] any distinct group as such.

* * * *

[13.247] OSCAR H. YORK, Sworn.

DIRECT EXAMINATION

BY MR. SEGAL:

Q Mr. York, when did you start at Lukens Steel Company?

A April of 1956.

Q And what position did you start in?

A I started in the labor gang, 140 labor gang.

Q And are you currently working for Lukens Steel?

A Had I been currently?

Q Are you currently. Are you today working for Lukens Steel?

A No; I'm on disability.

Q When did you go on disability?

A My last day of work was November 11th of 1976.

Q Will you look for a moment at Plaintiffs' Exhibit 1054.

A Yes?

Q Under "Name" it says "_____" and

[13.248] "C.M."

Do you know what the "C-M" means?

A No.

THE COURT: We can all guess.

* * * *

[13.255] Q Now, did there come a time in which you decided that you didn't want to work as a temporary general foreman anymore?

A Yes.

Q About when was that?

A The end of '63—'72 I'd say.

Q '72?

A Yes.

Q Why didn't you want to work as a temporary general foreman?

A At the time, my first marriage, I was having problems and the hassles that I was having at home I didn't want to carry over to the mill. I just couldn't contend with the type of things that they were doing.

One, I was working over there. We were all working these extra days. I was the only general foreman who hadn't got paid the sixth day for vacation.

[13.256] When it came down to my turn, there was some reason or another that they cut it out.

Q They were giving you vacation time on the basis of a five-day week, rather than a six-day week?

A Right. Plus the fact that what was happening to Mr. Cazzill and some of the hassles that I was having with the general foremen, the other general foremen, which were white, in general, by leaving bad information, et cetera.

These things when I would go in and relieve my general foreman, usually I would say at least 50 to 60 percent of the information was out of place, in the wrong place and I visually had to go out and check everything before I would start my shift.

Q These were the reasons that you decided not to remain?

A Absolutely. There was too many hassles.

Q And as temporary general foreman, who did you tell?

A I had told Fred Nill. He was superintendent.

Q He was the superintendent?

A Yes.

Q Is he white or black?

A White.

Q What reasons did you initially give Mr. Nill for not wanting to remain as temporary general foreman?

[13.257] A Well, initially, I didn't want to get into the feeling as far as being discriminated against at the time.

This was an awful hard thing to prove.

Now, I had found this out during the years that I was shop steward. I found that I was able to work better by not saying discrimination, but just by proving that they were wrong and getting some records to verify this.

* * * *

[14.3] JAMES H. JONES, sworn.

DIRECT EXAMINATION

BY MR. EWING:

Q Mr. Jones, you're currently president of the Negro Trade Union Leadership Council here in Philadelphia, are you?

A That is right, sir.

Q And from the early 1940s until you retired in 1970 or 1972 you worked for the United Steel Workers of America?

A That is right.

Q And before you retired you held the title of special assistant to the president of the International Union?

A Yes, I did.

Q During your time with the steel workers, did you help to organize a number of local unions?

A Yes, I did.

Q In fact a large number?

A A large number is right.

[14.4] Q When new local unions were organized and seniority systems were instituted, didn't the International Union often allow the local unions to determine the specific units and the jobs to go into each unit in the light of local conditions?

A Sometimes that was the case, but I might add that the International Union while it gave latitude to local unions to make certain decisions and so forth and so on the International Union never relinquished its responsibility and its right to make sure whatever change that was made was not in violation of the union's constitution and to make sure that that kind of an agreement that they made did not discriminate against any person, whether it is black or white.

Q Now, among the local unions that you helped to organize was the steel workers union at Lukens Steel Company, wasn't it?

A Very true, sir.

Q And you put in a lot of work on that in the early 1940s?

A Yes, I did.

* * * *

[14.6] Q Now within the plant at Lukens did you find that black workers were relegated to certain areas and some of them couldn't get out of those areas?

A Yes, I did.

Q And that some seniority units or parts of the plant were all white and others were all black?

A Yes.

Q Now, in all your work with these two workers around the country you've seen some seniority systems in operation in many places, haven't you?

A Yes.

Q And you are aware that if seniority isn't applied adequately and fairly it will surely result in discrimination?

A Yes.

Q And isn't it true that sometimes unit and departmental seniority systems have been used purposely to keep black workers in certain areas?

A I would say that goes both ways. I would say yes. [14.7] But I might add that as far as the union itself was concerned some of those units were in effect before the union got there and solely because the union negotiated a contract and left some of those units the way they were did not mean the union itself was negotiating a discriminatory policy because you know and I know, at least I know, when you organize a plant you have your first collective bargaining agreement. You are not the strongest person in the world. Consequently some changes could be made and some changes could not be made.

Q Sometimes both systems did exist?

A Yes.

Q And while you don't know whether the seniority system at Lukens was adopted for a specific reason, the conditions were there, weren't they?

A The conditions were there when we got there, when the union first organized. And prior to that the condition did exist in Lukens at that time.

* * * *

[14.9] Q Did you have any discussions with Lukens' management regarding the issues over racial segregation and discrimination in job assignments at Lukens?

A Yes.

Q And at what time did you have those discussions?

A That was in the early days of the negotiations. I wasn't the negotiator but because of the relationship [14.10] and because of what I had done to campaign, I

felt it was my responsibility to remind and tell the company what I thought ought to be done.

Q What was it that you told the company?

A That segregation had to go; discrimination in all forms had to go, and go as soon as possible. That I did.

THE COURT: When did you say that?

THE WITNESS: Beg your pardon?

THE COURT: When?

THE WITNESS: That was the early days—right after we won the National Labor Relations Board election and as soon as we started negotiation.

THE COURT: When? What year, approximately?

THE WITNESS: About 1942.

THE COURT: Thank you.

BY MS. CLARK:

Q Was there specific mention made of segregated facilities at the plant?

A Yes.

Q And what [did] you say to Lukens' management on that subject?

A That it was a condition that the union didn't like and the union would do everything possible to [14.11] change.

Q Did you have subsequent conversations with Lukens' management on that subject as well?

A Yes.

Q Would you describe those discussions?

A Well, there was one instance where I thought that all of the segregated facilities had been removed and I found out they had not.

It came to me by somebody from the Human Relations Commission, State of Pennsylvania. It was then I found it out and I discussed it, and the company said, yes, we were supposed to make the changes but we didn't do it, but it will be done now, and it was done soon thereafter.

THE COURT: When was that?

THE WITNESS: Time frame-wise, Judge, I honestly couldn't give it to you right now.

BY MS. CLARK:

Q Would that have been in the neighborhood of 1966?

A It could have been. I think the record would show that, wouldn't it? I honestly don't know.

Q Why was it that time you thought the conditions had been changed?

A Because of my discussions with the company [14.12] over the issue of segregated facilities.

They recognized it and said they were going to change them. And that's why I thought the issue had been resolved.

Q And had you had discussions between 1942 and the mid-1960's on that subject with Lukens' management?

A Sometimes; a couple of times during that period of time frame.

* * * *

[14.31] BENJAMIN PILOTTI, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. GARTRELL:

Q Mr. Pilotti, what is your present job at Lukens Steel Company?

A I work as a plumber in the pipes department.

[14.32] Q That's a trade and craft job; is that right?

A Yes.

Q You've been active in Local 1165, the Steel Workers Union at Lukens since 1958, correct?

A Yes.

Q And that year you were elected as a trustee of Local 1165?

A Yes.

Q In 1962, you were elected as a committeeman; is that right?

A That's right.

Q And you served as a committeeman ever since?

A Yes.

Q You were elected vice president and chairman of the grievance committee in 1973?

A Yes.

Q And you've served since 1975 as president of 1165?

A Yes.

Q You've been on the negotiating committee since 1968?

A Yes.

Q And have you been on it every year that the contract was negotiated since that time?

A Yes.

Q Are you presently on the negotiating committee [14.33] for 1980?

A Yes.

Q Is it correct to say that there are approximately 2600 members of Local 1165?

A Approximately that many, yes.

Q And since 1956, have all hourly employees at Lukens been required to join either 1165 or Local 2295, the Steel Workers Union?

A After the 30 days of being an employee at Lukens, yes.

THE COURT: Since what year?

MS. GARTRELL: 1956.

THE COURT: How many members did you say there were?

MS. GARTRELL: 2600.

BY MS. GARTRELL:

Q Do you know how many members there are of 2295?

A At the present time?

Q Yes.

A Just a rough guess, about 80.

Q About 80?

A Yes.

Q Do you know the greatest number of members at 2295 it has had throughout its history?

A I understand that they were at their peak, at [14.34] 5 or 600 people. That was during World War II.

* * * *

[14.37] Q Now, in terms of the local's relationship to the International union, is it the International which signs the collective bargaining agreement?

A My experience as president, okay, when we sign the agreement I was asked to sign it as the president of Local 1165.

Q Is the International the recognized bargaining agent?

A Yes.

Q And is there an International staff representative at Lukens at all times?

A Yes.

Q And does that staff representative handle or take charge of all arbitrations on behalf of Local 1165 and the International?

A It takes care of all four step grievances and arbitrations.

Q And is that staff representative in charge of local negotiations, contract negotiations?

A Yes.

Q From the time you went to Lukens in 1946 and the [14.38] time previous to that, which would have been what, '44 or '45, you were aware of segregated locker rooms, were you not?

A I was aware of segregated locker rooms when I became a journeyman and was given assignments. And the assignments referred to the 120, an example, welfare building the black side or the white side.

Q Only at that time they said colored, didn't they?

A Colored, yes.

Q Do you remember what year you became a journeyman?

A I would say 1948.

Q And in addition to the 120 welfare building, did you observe that there were other segregated locker rooms or wash rooms?

A The 140 welfare building and in the nickel clad building and in the open hearth area they refer to as white side or black side.

Q And, Mr. Pilotti, you don't personally know of any action taken by Local 1165 to end the segregation of locker rooms and wash rooms at Lukens, do you?

* * * *

[14.39] Q And by the 1960s, the late 1960s, you were also aware, were you not, that there was some subdivisions which were almost entirely black?

(Pause.)

A Entirely black.

Q Almost?

A Yes. There was subdivisions that were all black—almost all black.

Q What were those?

A Well, the track gang. It used to be a unit and [14.40] then a pool job and made it back to a unit. They were mostly all black.

Open hearth pits, they were mostly all blacks. I don't know how many whites were in there, but there were whites in there.

Q Did you also know at that time that there were some mostly black units which had lower than average job classes as the highest job class in the unit? For example, the highest job class was no higher than a 9 or a 10?

A Well, that would be the track gang; the highest job there would be the 9, the gang leader, and you had 7s and 4s.

Q Do you know of any subdivisions which were mostly white in which the highest job class was no higher than 10?

(Pause.)

A I can't think of any right now.

Q Were you ever aware of any?

A. No.

* * * *

[14.58] Q Have you become aware, Mr. Pilotti, that blacks are discharged from Lukens Steel Company supposedly for just cause in disproportionately high numbers?

A With my experience, since I was chairman of the grievance committee, I really don't have the number. It seems to me that maybe blacks would outnumber the whites, [14.59] yes, but I don't have the right numbers.

Q Would you say that discharged grievances or discharged cases are the highest priority that the union has?

A I made it my business that would be the highest priority.

Q Are they generally the highest priority of all the grievances?

A As far as I'm concerned, yes.

Q Did you become aware, as well, that there are a disproportionate number of probationary employees who are black, who are discharged for cause?

A Well, I wouldn't have no record of that, although right now it's the policy of our local union, if anyone reports to the union hall and is discharged during the 520 hours, we file a grievance, just for a matter of record.

Q Is that for anybody who's black or anybody?

A Just blacks.

Q When did you start that practice?

A We were advised—I went to a civil rights conference in Pittsburgh, approximately a year ago, or at the end of March in '79 and it was advised by the civil

rights director in the international—to keep a record of black employees discharged during the [14.60] probationary period.

Q You say you were advised a year ago. When did you actually start to do it?

A Since we got back from that conference.

Q A week after or ten months after?

A. I assume, we got back, anybody who came to the union hall and made a complaint, that they were discharged, that we filed a grievance and made a record. I have knowledge of one case that I personally filed a grievance for.

Q Who's that.

A I don't have the name. I don't have a name.

Q You know what unit he or she was in?

A No, it was a male.

Q Do you remember what his job was?

A No.

THE COURT: What happened to the grievance?

THE WITNESS: I couldn't answer that. He went through the grievance procedure. The chairman took care of it.

BY MS. GARTRELL:

Q Did you instruct your committeeman, assistance committeeman and shop stewards that they should now begin to advise employees or probationary employees, [14.61] that if they are fired and they think it's racial, they should file a grievance?

A I'm pretty sure that the chairman did instruct the committee to do that.

He was at the same conference as I was.

Q When you were at that conference and they gave you these instructions, did they tell you why they were so instructing you?

A They just wanted a running record, just to see if it was racial that the people didn't make the 520 hours.

Q Isn't it true, Mr. Pilotti, that since 1974, the contract has offered special protection to probationary employees, who think they have been fired on the basis of race?

A Not in our language, anyway.

During the 520 hours, that they were discharged strictly at their discretion.

* * * *

[14:103] Q Mr. Pilotti during the years when segregated locker rooms were in existence at Lukens, were you in a position from which you would have known about efforts being made by other union officials to end the segregation in those locker rooms?

A No.

[14.104] Q For what period of time or beginning at what time were you in an integrated locker room?

A Well, if my memory is right, the craft shop, that's the pipe shop, the rigger shop, the miscellaneous mechanics and the welding shop moved into the 84 Building, approximately 1951, and that locker room that we were reassigned to, that was—there were blacks in that washroom; '51 or '52, one of those two years.

Q What area of the plant did those black employees work in the area who were assigned to that locker room?

A There was the weld shop; the gentlemen in the weld shop was in that washroom and since we were just adjacent to the open hearth pits, some of those fellows—you know, there were open lockers that kind of got in there, yes.

Q Were there grinders in your locker room?

A Yes, there were grinders, also in the locker room, but they also came over in later years, '55 or '56.

Q You were asked, Mr. Pilotti, if you're aware of any subdivision that was primarily white, which had a job class no higher than 10.

In other words, 10 or lower is the highest job class.

[14.105] Do you know what's the highest job class in the central [stores] subdivision?

A I'm pretty sure that's a 7.

Q What about the Willowdale warehouse?

A Willowdale warehouse would be a 10. That would be the gang leader.

Q What about the truck drivers' subdivision?

A That's a 10.

* * * *

[14.108] Q When you argue in a discipline case that an employee was not disciplined for a just cause, can you explain how that applies if you believe there are other guys who did the same thing and weren't disciplined?

A We'd call that discrimination.

Q Does the just cause standard itself, without the help of Article 18 of the contract—

A Right, I would say that is true. You have to prove was it for just cause.

Q Have you in fact argued discrimination in discipline cases?

A Yes.

Q Have you argued race discrimination in discipline cases?

A Yes, I think I gave some examples.

THE COURT: Did you use the word race discrimination in making that argument?

THE WITNESS: Yes.

Q Do you recall any particular recent cases in [14.109] which that was done?

A As I said before, Paul Butcher—

Q In the discipline case.

A Oh, I'm sorry. In the discipline case, I think Mr. Dantzler?

Q Which case was Mr. Dantzler?

A That's where he was discharged—

THE COURT: We're all familiar with Mr. Dantzler's case.

BY MS. CLARK:

Q I'm going to show you a document that's marked Union 262, and I'll ask if that refreshes your recollection, whether you've ever put the words, race discrimination into a grievance?

A I handled the case, so that's what I put in the grievance.

Q And that says, discriminated against me because of my color?

A My color, yeah.

Q And, for the record, who was the employee there?

A James Williams.

THE COURT: What's the date?

THE WITNESS: It was filed on 11/19/75.

* * * *

[14.113] Q Was there another election that was protested at the same time as Leon Whitfield's?

A Yes.

Q And what was the outcome of that protest?

A The International overturned the election and awarded the job to a Bob Coffee instead of Howard Yost.

Q Was Bob Coffee the previous incumbent in the office?

A No.

Q What was he?

A He was just a Shop Steward.

Q Was he a candidate for the election?

A Yes.

Q And do you know whether Central Stores, [Willowdale] Warehouse and the Truck Subdivision are predominantly white or black?

A Over what period of time, now—

Q Mid to late '60's.

A I would say there were blacks and there would be mostly white.

* * * *

[14.115] Q Now, in this application of just cause in disciplinary cases, I think you used the phrase somebody has been doing the same thing only they were treated differently.

Isn't that the standard defense you use practically in every discipline case? When you, the union, are challenging the company's discipline one of the reasons you use the challenge is because somebody wasn't treated the say way?

A Not in all cases.

Q Not in all cases but in most of the cases that is the argument you use; isn't it?

A I would have to look at the case and look at the merits of that case.

THE COURT: That is the argument if they can have some evidence on that subject.

BY MR. LANDIS:

Q And you use that on behalf of whites or on behalf of blacks?

A Yes.

Q And it has nothing to do with race, does it, as far as the argument is concerned?

A No, no.

* * * *

[EXCERPTS FROM DEPOSITION OF HUGH P. CARCELLA]

[14.136] MR. EWING: We have some excerpts of the deposition of Hugh P. Carcella I will have read into the record.

* * * *

[14.137] MR. EWING: "Question: Mr. Carcella, you were district director for the United Steel Workers; is that right?

"Answer: Right."

On page 3 going on to page 4.

[14.138] "Question: What was your District?

"Answer: District 7.

"Question: And what is the area that that covers?

"Answer: District 7 covers the Eastern County, mainly Philadelphia, Reading, Lebanon, York, Lewistown and up into Bucks County, down into Delaware and clean up into Altoona.

"Question: And that includes Coatesville, does it?

"Answer: It includes Coatesville.

"Question: What years were you District Director?

"Answer: I have twenty-five years of it. I believe I first became District Director in the 1950s some time. Let me see now, let me go back. I retired in '77, I guess. I served for four or five consecutive terms, four-year terms. It would be the overlapping, it gives you three months or so both ways.

* * * *

[14.144] "Question: I will show you a letter dated August 5, 1966 which I will ask to be marked Carcella Exhibit 1. (Handed.)

"(Whereupon Exhibit Carcella 1, Letter dated August 5, 1966 from T. J. Ryan to Hugh Carcella—Two Pages, was marked for identification.)

"Question: Have you finished reading the letter?

"Answer: Yes, just about.

"Question: Let me know when you are finished.

"Answer: I thought I would find some place in here where we might have given them a an extension of time to get these things done.

"Question: I was going to ask you if you [14.145] recalled receiving the letter. Do you recall having received that?

"Answer: I don't, but I believe I may have received it.

"Question: Do you recall whether you made any response to it?

"Answer: I probably would have responded to it, yes.

"Question: Do you recall what your response was?

"Answer: No.

"Question: But is it normal that you recall having given some extension?

"Answer: It sticks with me that we may have done that. See, we were the second or third District in steel and of course we were flooded with these kinds of complaints. Some of the Districts are apt to get all of their work out with one or two girls. We had to have seven or eight.

* * * *

[14.154] "Question: During the time that you were district director before 1966, did you make any efforts to end any segregation that existed in locker facilities or other facilities at Lukens?

"MR. HOFFMAN: I would object to the form of the question.

"THE WITNESS: Did I make any efforts to correct that situation?

"MR. EWING: Yes.

"THE WITNESS: Yes.

"BY MR. EWING:

"Question: What did you do?

"Answer: I talked to management about it and I got an assurance I believe that this would be taken care of, but it couldn't be done [14.155] overnight or in a week or it couldn't be done in two days or three. It would take a little while, but it would be accomplished.

"Question: Whom did you talk to?

"Answer: Five or six people I could have talked to, but I don't remember which.

"Question: Who would the five or six possibilities be?

"Answer: Well, some of them are not there anymore.

"Question: That's all right.

"Answer: 'Whitey' Mullestein could have been one of them, the present industrial relations director could have been the other one. It could have been the other one; it could have been another one.

"Question: Do you remember that person's name?

"Answer: Ryan, I think.

"Question: Ryan?

"Answer: Yes. Now, I believe that these are people that I might have talked to about that.

"Question: Do you recall when you spoke to them?

[14.156] "Answer: No.

"Question: Do you recall how many times you spoke to them?

"Answer: Very frankly, I think I only spoke to them on one occasion and I was satisfied that they were sincere in their position that they would do the best they possibly could. However, it would take a little while before all of these things would be cleaned up and it was made known to the local union. And they understood it because of the real large order that was presented to them.

"Question: What called this situation to your attention?

"Answer: Oh, I don't know whether it was some member from down there that raised hell or whether the local union officers raised, but somebody raised hell about it, which was fine because it should have been a condition that never should have existed really.

* * * *

[14.160] "Question: Besides speaking to Mr. Ryan or Mr. Mullestein—

"MR. HOFFMAN: Or someone.

"MR. EWING: Or perhaps someone else, are you aware of any other actions that the steelworkers or either of the locals took to bring that about, the integration of the showers or locker rooms?

"THE WITNESS: You mean, at Lukens?

"MR. EWING: Yes.

"THE WITNESS: I think the only other thing was the constant raising of hell on the part of the black people and the black people fighting for it. And let me assure you that there was some opposition. I am not sitting back here and kidding nobody.

"BY MR. EWING:

"Question: Do you recall what the black people did to fight about it or raise hell about it? Do you recall any examples of that?"

MR. SILBERMAN: Objection, your Honor. No first-hand knowledge and no foundation—

THE COURT: You don't think the witness has any first hand knowledge, whether he recalls anything [14.161] or not. Who else would know better than he, whether he recalls or not? Objection overruled.

"No, they didn't go out and murder or shoot anybody. They didn't go out and beat people up. They let it be known locally at local union meetings and local union halls and they were pressuring the local union officers to do something about it and they pressured us to do something about it. And during the terms of the agreement, while you sometimes find yourself in a position where you cannot do anything about it immediately, but you can do it in the future. And this I think is about what the position ended up like in Lukens."

* * * *

[22.51] ANTHONY GIANOTTA, sworn.

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. Giannotta, you are presently retired; is that correct?

A Yes, sir.

Q Prior to 1975 you worked for Lukens Steel Company; is that right?

A Yes, sir.

Q When were you first hired at Lukens?

A 1936.

* * * *

[22.52] Q Now, take a look at Union 512A in the folder in front of you. Does that correctly state the positions you held from 1937 until you retired in 1975?

A Yes, sir.

Q You were a Foreman and General Foreman from 1958 on; is that right?

A I was Foreman and General Foreman, yes, sir.

Q How were you first hired at Lukens?

A When I first tried to get a job at Lukens I went to the Employment Office in 1933 to '36. And when I went in there approximately there was about 200 people, 100 or 200 people in the office and you signed your applications. Then [22.53] they would call names out and I didn't know how the heck they got all these names. And I went there for over two and a half years trying to get a job and could never get a job. Called different jobs and never could get a job. I asked Lou Irwin who was in the office, the Employment Office, he said, "I don't know."

So I went back and seen my stepfather and I told him. "I can't get no job at Lukens." He said, "I will see what I can do." After that, why he told me, "Tomorrow morning you go down to Lukens' office." I goes down there and they call my name out. They gave me a slip to go see the Superintendent and when I went in and seen the Superintendent he gave it to the Pit Superintendent and the Pit Superintendent signed the slip and sent me back to the Employment Office and I was hired.

Q And you started working in the area where your stepfather worked?

A Yes, sir.

Q It is your understanding that is how other employees were being hired at that time in areas where they knew people?

A Yes, sir.

Q Now, when you started work at Lukens, did Lukens have departments?

A Lukens had what they would call department seniority in the subdivisions which was Open Hearth Department where I [22.54] started at and they had a subdivision that was the Pits, that was the subdivision of the Open Hearth, the Floor was a subdivision of the Open Hearth, Scrap Yard was the subdivision of the Open Hearth, Rigger, Pipefitters and Plumbers, a subdivision of the Open Hearth and they also had a Labor Gang at that time in the Open Hearth.

Q Was there a seniority system in effect at that time?

A If they had it they never followed through with it.

Q If an employee wanted to promote from one job in his subdivision to another, what rights did he have?

A No rights at all. The boss put you where he wanted to put you.

Q If an employee wanted to transfer from one subdivision to another subdivision, what rights did he have?

A He had no rights at all at that time.

Q If there was reduction in force, what rights did the employee have to protect him from layoff?

A No rights at all. They just laid off anybody they felt like it.

Q Was it your experience that the bosses used this power that they had to discriminate?

A Yes, they did.

Q Were there certain areas in the plant or certain jobs that Italians couldn't get at that time?

A At that time, yes.

[22.55] Q Some jobs that blacks couldn't get at that time?

A Yes, sir.

* * * *

[22.69] ALBERT COOPER, sworn.

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. Cooper, you are presently employed by Lukens; is that correct?

A That is right.

Q And when did you start work there?

A I first started at Lukens sometime early 1937.

* * * *

[22.70] [Q] Have you been on the Executive Board of Local 1165 continuously since 1950?

A Yes.

Q You were on the negotiating team in 1954 when you became president?

A Yes. I came in on the tail end of the negotiations then. The negotiations had already started. As a newly elected officer I was included in the windup.

Q And then you were on the negotiating team in 1956; is that right?

A That is right.

Q And you have been in every negotiation since 1962; is that correct?

A Since '62, yes.

Q Have you ever served on any union committees?

A I have served on the Grievance Committee as this outline shows; the Legislative Committee, the Community Services Committee, Insurance, Publicity. That is most of the big committees. There may be some minor ones I just can't remember right now.

Q Do you attend membership meetings regularly?

A I do.

[22.71] Q How long have you been doing that?

A I attend as many meetings as I can ever since I became active in the union back in 1949 or '50.

Q And is the same true about Executive Board meetings?

A That is true.

Q What is the responsibility of the Executive Board?

A Well, the Executive Board is supposed to run the meeting in the absence of a membership meeting.

Q When you say run the meeting, you mean run the union?

A I mean run the union, I should say.

* * * *

[22.73] Q Did you have any personal experience in your first year or so at Lukens with the discretionary system for handling layoffs?

A I did. I was hired as I said in 1937, got laid off just before Christmas in 1937. At that time I wondered why I am being laid off because they are keeping people who came into the department after I did. So I asked the question. I said, "Jones, how come I am being laid off? You are keeping"—

Q Who is this Jones?

A Jones Rubicam was my Superintendent. "How come you are laying me off, you are keeping Jimmy over there. He hasn't worked here as long as I have." He said, "Well, Jimmy is married. You are single." So I said, "How about Joe? He has less time than me and he is single. Well, he helps to keep his folks," so I was laid off.

Q Now, when you started working Plant 4, what was the racial composition of the work force there?

[22.74] A It was mixed.

Q What jobs did the blacks hold in Plant 4?

A They held Labor, Floater, all the lowest jobs.

Q When you say lowest, you mean the lowest paying jobs?

A The lowest paying, right.

Q Was that because the black employees at Plant 4 had less time than white employees?

A No, not because they had less time because—although I wasn't too much aware who came where myself, when the first seniority list came out later years it showed that the top man seniority-wise was Lou Townes. He was black.

Q Take a look at Union 514 if you will. Are there any other blacks on the top five or six?

A Luke was number one. Number four was John Townes.

Q What jobs did they hold?

A Both had the low jobs, labor jobs.

Q Now, back in those days how was it decided how much an employee would get paid for a job?

A Well, there were supposed to be rates of pay. However, you are never sure. You may work alongside a guy doing the same job and he may be making more money.

Q Doing the exact same job?

A True.

* * * *

[22.76] Q Now, you said you became active in the union in 1949 or 1950; is that right?

A It was somewhere around that time. I have never been able to tie it down exactly.

Q Now, let me ask you to take a look at Exhibit 246 and ask if you can identify that for me.

A Well, that is a picture of the first by-laws that I remember.

Q Now, directing your attention to Article II, Section 1, where it says "Object," has language to that effect been in the 1165 by-laws ever since you became active in the union?

A You mean to unite this local union regardless of race, creed, color, nationality, all eligible employees?

Q Right.

A That is right.

Q It has been there ever since you have been active?
A Yes.
Q How about Article III, Section 1, the eligibility members language? That has been in the by-laws ever since you [22.77] have been active?
A All working men and working women, regardless of race, creed, color, nationality, that is true, that has always been in our by-laws.
Q Was it usual or unusual in Coatesville in those days to have an organization that had accepted blacks and whites for membership?
A Very unusual. The union was the only organization I know of that had both blacks and whites. Other organizations are either all black or all white.
Q When you started attending union meetings, were the meetings integrated or segregated?
A They were integrated.
Q Were there blacks holding union office in the union?
A From the blacks holding offices in our union—
Q Exhibit Union 800, is that the current by-laws?
A Yes, it is.
Q Now, why did you run for President in 1954?
A Well, I was a young fellow, had no intent to run for President. I was [approached] by Vernon Greenlee. He asked me to run.
Q What was Mr. Greenlee's race?
A Black.
Q Who nominated you for President?
A Well, at the time they nominated me I didn't attend [22.78] the nominating—I was in the hospital. I understand Vernon Greenlee—
Q Was Vernon Greenlee your running mate or Vice President?
A He was.
Q Elected in 1954?
A He was.
Q In 1956?
A In 1956 we ran and we won.

Q Take a look at Union 423, again I apologize for the copy. Is that a list of the Executive Board during your second term as President?

A This is part of the Executive Board. It doesn't include the trustees or otherwise it should have five trustees and two guards and guides.

Q Looking at the members of the Grievance Committee, are any of them black?

A Yes. Vernon Greenlee and Isaac Whitaker.

Q Looking at the Assistant Committeemen, are any of them black?

A Harry Redner, and Howard Snow.

Q Was it unusual for the union to have two black Grievance Committeemen and two black Assistants?

A Oh, no, not at all, we could have more.

Q Was it unusual for the union to have a black Vice [22.79] President?

A No. Preceding me there had been—preceding Vernon Greelee there was a black Vice President.

Q Who was that? If I said the name Raymond Wilson, would that help?

A Raymond, Raymond Wilson. That is it.

* * * *

[22.85] Q Mr. Cooper, there has been testimony in this case that in 1962 the basic steel industry got a nondiscrimination clause and Lukens did not have such a clause added to its agreement. Do you know why that was?

A Well, in 1962 when we went in talking with the company, the company said they already had an agreement with the union.

Q When you say you went in, when the Negotiating Committee went in for its first negotiation session?

A We said, "Wait a minute, we just came in to talk to you. How come they said they had an agreement with Mr. Car- [22.86] cella?" We went back and got Mr. Carcella on the telephone. We said, "Huey, what is this?

We would like for you to come up and talk to us about this." He said, "I am rather busy right now, we will come down to see you. When are you available?" We went down to talk to him. He said he met with Lou Irwin out in Pittsburgh and he said he shook his hand and had agreed we were getting everything that came out of the big steel agreement. We said, "Look, Huey, we have a few local things we would like to talk about, you know. We don't like this." He said, "I didn't know that. I am very sorry. This won't happen again. But I did tell Lou Irwin, we did have a settlement based on the big steel agreement."

Q Were your local negotiations in 1962 long or short?

A Short.

Q Just so it is clear, it is your understanding Mr. Carcella and Mr. Irwin said you would get everything that came out of basic steel?

A That was our understanding.

* * * *

[23.3] Q Mr. Cooper, when we left off yesterday, we were at Union 661.

Would you explain what that document is?

A This is a call to a legislative conference in Washington by our district director.

Q And what does the note, the handwritten note, at the bottom mean?

A You mean the 6364 check number?

Q That is right.

A That is the expense check for our delegates.

Q You sent—Local 1165 sent delegates; is that correct?

A Our Local 1165 sent delegates to the conference.

Q And the next two sheets in this exhibit are the lost time for those delegates?

A Yes. They turned in their lost time expenses.

Q What were the race of the two men whose lost time [23.4] was here?

A Well, Herbert Brown is a black man and Horace DiDavid.

Q Mr. Cooper, prior to 1962 if the company would have denied an employee a transfer because of his test score, what could the union do about it?

A We often objected, but there wasn't much we could do.

Q Why is that?

A We didn't have any rights along those lines. We only have the rights in the contract. So we had to fight to get rights.

Q You didn't have any right to transfer between subdivisions; is that right?

A No. We could request; but it was strictly—if the company wanted to give a transfer, it could. If they didn't want to, they didn't have to.

Q What if the company gave a test for promotion within a subdivision; was that a problem the union ran into very much?

A Practical tests were no problems. Written tests I never heard of until we had the case involving two black men who bid for crane running jobs, Benny Carter and Booker Towles. They had to take the Wonderlic test. And based on the scores from the Wonderlic test [23.5] they were told that they could not be crane operators.

Q And you filed a grievance about that; is that right?

A Yes. We filed a grievance, and we fought it through the procedure.

We felt that no written test could measure a man's ability to operate a crane.

Q Union 292, is that the grievance you are referring to?

A Yes.

Q And just so I'm clear, this was the first time that you recall that written tests were used for promotions in a subdivision?

A I had never heard of it before.

Q Now, after 1962 when you won transfer rights between subdivisions, did the union try and do anything about testing, testing for transfers between subdivisions?

A We always took the position that the tests should be a practical test, that written tests weren't fair. Written tests weren't fair to people who didn't—had limited educations, who couldn't read or comprehend properly. And minority groups were—among minority groups there were a lot of people who didn't finish school.

[23.6] Even, for instance, Booker Towles is a high school graduate, Benny Carter I'm not sure he graduated but he went pretty high in school and they both failed the Wonderlic test.

Q Did the union make any proposals about testing in negotiations?

A We proposed elimination of all testing.

Q And in the course of those discussions did the union make the arguments that you have just made as to why the union was against testing?

A That is right.

Q Take a look at Union 533, if you will. Do you have that in front of you?

A Here it is.

Q Page 7 of that exhibit, the bottom paragraph where it says "Union comment," do you recall the union making comments such as reported here in negotiations?

(Pause.)

A That is right. That is what I just commented on, the fact that people with limited education had problems and they were test shy. You put a test in front of them, they tighten up.

Q What were the results of the negotiations when the union proposed elimination of testing?

A The company wouldn't agree to eliminate testing, [23.7] but I believe they did agree to go along—let's see, Big Steel formed a committee on testing. And they

agreed to go along with what came out of Big Steel with regard to testing.

Q And did the Big Steel Committee come up with language governing the use of tests?

A They had quite a time on testing, Big Steel; and whatever they got out of Big Steel we got.

Q Has the union to your knowledge endorsed the testing language that you have gotten into your contract?

A Right. We would like to go a lot further. We would like to eliminate the test. We would still like to eliminate them all.

Q Has the union endorsed the rights that you do have with respect to testing?

A We have.

Q Now, after 1962 when you got a right to transfer, did the union make any proposals to try and change the way transfers were being handled?

A Well, we weren't satisfied with what we had because you could—it wasn't everyone's knowledge, the jobs that were open. There could be openings that only a few people would know about. You know, if you had a friend in employment or a friend in another [23.8] department, he could tip you off there would be a good opening here and you could put a transfer in.

We felt the only way to handle this would be to advertise company-wide, advertise on the bulletin board so everyone could see where the openings were rather than have a request in the employment office for a transfer.

Q Do you happen to recall when the union first proposed posting after the 1962 transfer rights were negotiated?

THE COURT: Opposed or proposed?

MR. SILBERMAN: Proposed, I am sorry.

THE WITNESS: We've proposed company-wide [posting] for a long time. In fact, we would like to have had it back in 1962.

* * * *

[23.20] Q Has it ever been the union's policy or standard procedure to refuse to file or process race [23.21] discrimination grievances?

A Never.

Q In your experience what is the effect of alleging race discrimination in a grievance?

A You mean just a straight grievance on race discrimination or a grievance involving something else?

For instance, I have had a man say: "Hey, I think they are discriminating against me by not giving me a promotion."

The main thing we are after here is promotion.

Now, if we get too many issues involved, then we got two problems to settle. And unless the man has some real good information with regard to discrimination, it is difficult—it makes it more difficult to settle.

If you have the two things in there together, then the company gets their back up a little more and it is hard to settle the whole thing.

We found it is better if we say: "You have refused a man a promotional opportunity that is due him. Treat every man as a man, not as he goes to this church, that church, black or white, but treat every man as a man."

* * * *

[23.32] Q Now, in about 1941 when Lukens built a brand new building in your area with two locker rooms, they had one for whites and one for blacks, didn't they?

A That is right.

* * * *

Q Based on your recollection, aside from what you have read in the documents that Mr. Silberman showed [23.33] you yesterday, you don't recall the union ever proposing a non-discrimination clause be included in the collective bargaining agreement, do you?

A By "the union," are you referring—I think our International Union has been for this since the beginning.

Q My question is whether Local 1165 or Local 2295 ever proposed it in negotiations with Lukens?

A We proposed that we get the things that came out of Big Steel.

Q You never specifically proposed a non-discrimination clause; is that right?

A You're talking about us prior to—the '62 date there, prior to '62?

Q At any time.

A There was never anything proposed in negotiations.

• • • •

[23.36] Q Now, you also believed that foremen and other supervisors at Lukens sometimes engaged in ethnic discrimination, didn't you?

A I have suspected that there was—I said all [23.37] types of discrimination, ethnic, all types of ethnic group discrimination and religious, nationality, what not, both black and white.

Q Including racial discrimination, right?

A Right.

Q But you have never filed any grievances on the grounds of racial or ethnic discrimination, have you?

A Just a straight racial or ethnic discrimination grievance, no. I have filed grievances involving what I felt was discrimination with promotional opportunities or things like that.

And this also involves black people.

Q In this grievance on behalf of Benny Carter and Booker Towles with regard to the crane operator job, you didn't make any claim of racial discrimination there, did you?

A No, I didn't.

You know, you compound that problem, as I stated previously when I spoke to the other attorney, if you

put the racial discrimination bit in there. Then you have two cases to handle. And you have a more difficult grievance to solve.

The main thing we are after is the economics in the situation, the more money for the man, the promotional opportunity or to have something [23.38] removed from his record.

Q But that grievance wasn't won, was it?

A What is that?

Q The Booker Towles, Benny Carter grievance?

A I can't—as the gentleman over here stated, it was withdrawn there by the staff man. I don't know why. I don't think it should have been withdrawn. I thought it should have gone to arbitration.

Q You don't recall ever telling any company representative that you believed a foreman or another supervisor was discriminating on the basis of race or ethnic origin, do you?

A No.

* * * *

[23.41] Q Now, you believed that the Wonderlic test, which was the test involved in that grievance involved on cranes, that that disqualified a higher percentage of blacks than whites, didn't you?

A I think it disqualified a high percentage of anyone who has difficulty reading or writing, which would include blacks.

Q You thought that it disqualified a higher percentage of blacks—

A Very probably it did.

Q And it was discriminatory?

[23.42] A We felt it was discriminatory. We wanted it thrown out for a long time.

Q But you don't recall any discussion within the union of challenging the Wonderlic test generally on the ground that it was racially discriminatory, do you?

A We challenge on the basis that it is discriminatory and we feel that if we say it is discriminatory that in-

cludes all of us, all black and white. We are all in the same boat together.

Q Do you recall any discussion of a general grievance against the company's using the Wonderlic test on the ground that it was discriminatory?

A I can't recall.

* * * *

[23.51] LLOYD LAWRENCE, sworn.

DIRECT EXAMINATION

* * * *

Q By whom are you presently employed?

A By the International United Steel Workers.

Q And what is your position?

A I'm a Sub-district Director in the Malvern office.

Q How long have you been employed by the International Union?

A Since April of 1970.

Q What position did you hold before you were Sub-district Director?

A I was a staff representative for the United Steel Workers.

Q What is your responsibility as Sub-district [23.52] Director?

A My responsibility is service various local unions and also administer the responsibility of the Malvern sub-district.

Q Before you worked for the International Union, did you work at Lukens Steel?

A Yes.

Q Can you briefly describe your employment history at Lukens?

A I was employed as an apprentice machinist at Lukens Steel Company in April of 1942.

In July of 1942 I enlisted in the United States Navy and served in the United States Navy for five years.

Returning from the Navy I continued in my apprentice course and became a craft machinist and then worked there until I joined the United Steel Workers.

Q What was the first position you had with the Local Union at Lukens?

A I was a shop steward.

Q And in approximately what year did you become a shop steward?

A In the middle '50s.

Q And did you hold a number of offices with Local [23.53] 1165?

A Yes. I was committeeman, Chairman of the Grievance Committee, and also president of the Local.

Q What were the years when you were chairman of Grievance Committee?

A From 1962 until 1964.

Q What years were you president?

A From 1964 until 1970.

Q As between the International Union and a Local Union at any plant that the steel workers represents, which of the organizations is the bargaining rerpesentative certified by the NLRB?

A The bargaining representative is the International Union.

Q And which union, the International or the Local Union, is authorized to enter into collective bargaining?

A The International is the representative and the local staff of it.

Q What does it do?

A When contracts are negotiated they are negotiated with the International on behalf of the local union, and it is the local union's responsibility to see that these contracts are policed.

Q Does the local union have some responsibility [23.54] in the grievance procedure?

A Yes. Generally in the case at Lukens we have what we call the five-step grievance procedure. And it is

the responsibility of the local to carry the grievances through the first three steps of the grievance procedure.

Q And who handles then the fourth and fifth step?

A After a grievance once is appealed to the fourth step and to arbitration, it is the responsibility of the staff representative that services that local.

Q What is the role of the International Union's staff representative?

A The role of the International staff representative is to hear grievances in the fourth step, also to hear grievances in arbitration, to attend local unions, to see that the policies of the International are upheld and also to give the local any assistance that is necessary in servicing their members.

Q Does the staff representative have any responsibility in contract negotiations?

A Yes. Usually the staffman along with the local union negotiating committee; they are the ones that are in charge of negotiations.

Q And does the staff representative have any [23.55] role with respect to complaints by the membership about how the local union leaders are handling their responsibilities?

A Yes. From time to time—and this does happen frequently—if members are not satisfied with how some of the officers or grievance committeemen are doing their job, they do complain to the staffman and the staffman does whatever is necessary to correct the situation.

* * * *

[23.57] Q Mr. Lawrence, in which years did you participate in the negotiations at Lukens?

A I participated in 1962, '65 and '68 elections.

Q In those years, what was the relation of the bargaining at Lukens with the bargaining that is carried out by the International Union and the coordinating steel companies?

A We at 1165 were what we refer to commonly as a me-too agreement, which meant that the local union and the company had agreed to accept the economic package that the basic steel industry agreed to, and it would be implemented at a later date at the local level.

Q Other than economic issues, were there other matters negotiated at the Coordinating Committee level [23.58] that were implemented at Lukens?

A Oh, yes. Anything that was agreed to in the International package—seniority, committees, and so on and so forth—would be implemented at the local level.

Q What then is the subject of the bargaining at the local level at Lukens?

A The bargaining at the local level usually is to implement what the basic steel companies agreed to and try to correct and improve any local conditions that we have had trouble with in the previous years of the contract.

* * * *

[23.59] Q How was the Negotiating Committee selected?

A The Negotiating Committee is selected by the membership.

Q Once negotiations were underway with the company, who decided which of the company's offers would be accepted or rejected?

A The Negotiating Committee, subject to ratification by the membership.

Q During your years of active participation in Local 1165, can you describe the degree of participation by black employees in the local union meetings?

A Well, in my experience our participation at our local union meetings I always felt was above average, and when I say above average, I'm talking about attendance, and we always had a very, very good black participation in all functions of our local union.

Q Since you have become employed by the International Union, have you had an opportunity to observe membership meetings at other locals?

A Yes, I have.

Q And how does the black participation at Lukens compare to the other locals you are familiar with?

A Well, the black participation at Lukens I'm very [23.60] proud of because it's my home local union, and I think the participation there is better than any local that I'm familiar with.

Q Did the black employees also participate as officers and grievance representatives?

A Yes.

Q Can you explain the degree of that participation?

A Well, in my first term as president James Brown, who is black, was my vice-president, and Isaac Whitaker, who is black, was chairman of the Grievance Committee, and we always had several Grievance Committeemen that were black, and I can never—I can't remember ever having a slate of officers, the top five officers which one of them weren't black.

* * * *

[23.70] Q Now, turning to the specific negotiation issues [23.71] at Lukens that you participated in, can you describe what the union's position was on transfer rights based on seniority at Lukens?

A Well, we always felt that people should have a right to transfer to jobs wherever their seniority would carry them, in unlimited amounts of transfers.

Q How far back was the union holding this position?

A Oh, as far back as I can remember.

Q What was the reason that the union wanted transfer rights based on seniority?

A That was to give people promotional opportunity to get them into areas where the promotional opportunity would be greater than the area they were presently working.

[23.72] Q Does that union purpose having anything to do with racial patterns in initial assignment of employees to units?

A I'm not so sure if I understand that.

Q Were you or other union representatives aware that there were certain units at Lukens that had more blacks than others?

A Yes.

Q And others that were largely, if not entirely, white?

A Yes.

Q What did the union's position on transfer rights have to do with that situation?

A Well, we always felt that in the areas where there were an overwhelming amount of colored people or people of ethnic origin that they would like to have them transfer to units where their promotional opportunity would be enhanced.

Q In 1962 there were negotiations on the subject of transfer rights at Lukens.

Do you recall what the outcome of those was?

A That sounds like the time that we finally come to an agreement where you could have—transfer into two different areas, I believe.

[23.73] Q By that you mean a request for transfer?

A A request for transfer into two different units.

Q Were there any problems that the union encountered in the request for transfer system?

A Oh, yes. The company reluctantly gave in to our demands. Of course, our demands were much less than we would have liked to have also.

Q Once the request for transfer system was in place, were there problems that the union encountered in how it allocated opportunities to people or how that system worked?

A Well, can you be a little more specific?

Q Well, let me refer you to Exhibit Union 193, which is in a folder in front of you, Mr. Lawrence.

A Is that 193?

Q Yes. It should be very near the top.

A Oh, okay.

Q And I will direct your attention to paragraph 2 there, the second paragraph. It is not numbered.

You were present at that meeting, am I right?

A Yes.

Q Do you recall what Mr. Whitaker was referring to?

A Yes. I think what Ike was referring to that under the 60-day provision there could be some kind of [23.74] a collusion that could take place. If you were in the right place at the right time and the company wanted someone to have a job or that they thought there was an opening there for a job, they could see that that job was filled before an individual had his full 60 days in.

And if he didn't have his 60 days in, under the transfer agreement they could award it to whoever they saw fit.

And there was always the possibility that hanky-panky could take place.

Q Now, in the third paragraph of that minute, there is a description of a statement made by Mr. Gary and Mr. Scull for the company.

Do you recall such a statement being made at that meeting?

(Pause)

A I can't reply on that. I can't recall specifics.

Q Were there other problems with the transfer requests system having to do with employees being able to get information from their friends or buddies as to what openings were available?

A Yes. Well, depending on where the opening would be, the people in the area would have an advantage over somone that was isolated from that area.

[23.75] Q What, if anything, did the union propose to the company in order to deal with these problems?

A Well, we proposed plant-wide bidding for all jobs.

Q While you were at Lukens, was there any time when the company was prepared to agree to plant-wide posting?

A No.

* * * *

[23.78] Q Can you describe what the union's position was on the subject of testing?

A Generally speaking the union was always against testing. We had very basic reasons for being against testing. It was because blacks and people of ethnic origins didn't quite have the education that maybe some whites did. And they had a most difficult time in taking and comprehending written tests.

Q Did you make that position known to the company?

A In every negotiations we made it clear and in beween.

Q Did you make that position known to the company in the context of the Wonderlic test?

A Yes. We were never in favor of any kind of testing.

Q Did you make any specific statements to the company about your position on the Wonderlic test?

A I can't be specific, but I know that there were many times during the grievance procedure when grievances were being pursued on the basis of people [23.79] being denied jobs because of taking the Wonderlic tests that we voiced our disapproval of it.

Q Exhibit P-15 there in your folder, do you have a copy of it there?

I would like to direct your attention to the second page of that exhibit, paragraph numbered 7A.

A Yes.

Q You signed that agreement, did you not?

A Yes.

Q Did you understand that by agreeing to that the union was giving up its right to grieve over the use of tests for entry into these craft jobs?

A Of course not.

Q Or that it was giving up its right to grieve over the Wonderlic test?

A Of course not.

Q What was the union's position on the subject of whether black employees should have access to get into craft jobs?

A Our position was that we wanted everybody to be treated equally, whether they were black or white or what religion they came from. We wanted everybody to have equal opportunity to the highest promotion that they could get at Lukens Steel Company.

* * * *

[23.84] Q In the 1962 negotiations was the union opposed to including a non-discrimination clause?

A The union in 1962 was and never will be against discrimination of any kind.

[23.85] THE COURT: I don't think you mean that. It is the reverse of what you mean, you will never be against discrimination.

THE WITNESS: We will never be for discrimination.

BY MS. CLARK:

Q What about a non-discrimination clause in an agreement?

A We weren't againt it.

Q Did anyone for the company in the '62 negotiations express any opposition to putting a non-discrimination clause into the agreement?

A No; I don't recall that.

Q If no one was opposed, why then was the clause left out of the Lukens agreement?

A I don't know why. I guess because of the haste of negotiations or an oversight or whatever, but I don't know of any reason it was purposely overlooked.

Q In your experience in negotiating contracts since you have become a representative for the International Union, have you negotiated a number of contracts elsewhere?

A Yes.

Q In your experience it is common or uncommon in the haste to make a settlement you leave a provision [23.86] out of an agreement?

A Even in areas where there is no haste, even sometimes after we proofread the contract we find out that things have been inadvertently left out.

Q And that would include things that are noncontroversial?

A Yes.

Q Mr. Lawrence, are you familiar with any of the facts surrounding the West Side locker rooms when those —when the new locker room facility was opened?

A Generally.

Q Do you recall what the union's position was on the desegregation of those facilities?

A Yes. We wanted them to go desegregate as fast as possible.

Q Do you know whether that position was made known to the company?

A Yes, it was.

Q Did the union do anything at all that would stand in the way or delay the desegregation of those facilities?

A Absolutely not.

* * * *

[23.89] Q There was some testimony in this case that between 1962 and 1965 employees were given pool [23.90] assignments on layoff that were less favorable than pool assignments given to other employees who were also laid off.

Can you tell us whether there was any right in the 1962 contract for a senior man to get the more preferable pool job when he was laid off?

A There were no rights.

Q Was there any right at all for the senior man to select his pool job?

A No.

Q Did you receive complaints about this problem from employees within the local union?

A Frequently.

Q And what was the race of those employees who complained?

A Both black and white.

Q Were there any subsequent negotiations addressed to this [problem]?

A Yes.

Q Do you recall what those were?

A Well, at a later date we improved the pool system and subdivided the pools into what we call puddles.

Q Within those puddles were there some rights of assignment?

[23.91] A Yes. The reason for creating the puddles was to give people a right to bid on the higher jobs on a seniority basis.

Q Did they actually bid on the jobs?

A No. They claimed the jobs. I'm sorry.

* * * *

[23.109] Q You may want to look at Union 432, Mr. Lawrence, which lists Carl Cannon as one of the appointees you [23.110] named to a Civil Rights Committee in 1965.

Were you aware at that time that Mr. Cannon had served as a member of a committee of black employees from the pits which had gone to John Muhs to complain about segregated facilities in the plant?

A I'm still trying to hunt 432. I found it.

Q You don't really need the document to answer the question.

Were you aware at that time that Mr. Cannon had served as a member of a committee which had been made up of black employees from the pits which had gone to John Muhs to complain about segregated facilities?

A I'm not aware of that.

Q Were you aware of the existence of the committee?

A No, I don't recall the committee.

Q Did you know that any group of black employees had complained to management about segregated facilities?

A No, I couldn't say that I do.

Q The union never filed any grievance concerning segregated facilities, did it?

A I don't know if the union ever did. I never did [23.111] personally.

Q While you were president, wouldn't you have known if the union had filed a grievance complaining of segregated facilities?

A Not necessarily.

Q You would have known if it had been a group grievance signed by the union itself, wouldn't you?

A Not necessarily.

[23.112] Q From your years as president from '64 to '70, you don't know of any grievances filed by the union complaining of race discrimination at Lukens, do you?

A I don't remember personally, no; but I am sure that there were discrimination grievances filed.

Q You did know while you were at Lukens, didn't you, that there were some subdivisions that were segregated, some that were black, some that were white?

A I don't recall any subdivisions being segregated.

Q I show you a document, Mr. Lawrence, marked [P-1101], which is a memorandum supposedly minutes of Civil Rights Committee meeting of April 11, 1969, indicating that you were present at that meeting.

I will let you read this and ask you if this refreshes your memory as to whether there were segregated subdivisions. (Handing witness.)

* * * *

Q You were a member of the Civil Rights Committee [23.113] at Lukens in 1969; is that so?

A That is correct.

Q And you were present at that meeting in April of 1969?

A Well, my name is as the union representative, I imagine I was.

Q That would indicate that you were present?

A Yes.

Q And at that meeting company management indicated to the members of the Committee that they had been requested by the OFCC to do something about seven of the segregated subdivision units; is that so?

A Pertaining to what?

Q Did that happen or didn't it?

A Segregated pertaining to what?

Q Race, racially segregated units.

A What did they want desegregated, washrooms, the job opportunities, their lockers or what? What did they want desegregated?

Q The memorandum indicates OFCC had requested that something be done about the racially segregated subdivisions. That is what the company management people at the meeting stated to the members of the committee at that time, isn't it?

[23.114] A I have no knowledge of any segregated subdivisions at Lukens when I was there. I have no knowledge of that.

Q Do you have any memory of that occurring at a Civil Rights Committee meeting?

A No.

Q Nobody from management ever said that at one of these Civil Rights Committee meetings?

A They could have. I don't recall them saying that.

Q And if they had said it you would have pointed out there were no segregated units; is that right?

A When I say there were no segregated subdivisions, I say there were no segregated subdivisions as far as any blacks being discriminated against because of lay-offs, demotions or whatever.

And if 1165 was aware of any segregated subdivisions that blacks or any other minority people was being denied opportunities, we would have done something about it.

THE COURT: It is two different questions. She is using the term "segregated subdivisions" as I understand it to be a subdivision in which there were no blacks.

MS. GARTRELL: That is correct or one [23.115] in which there were no whites.

THE COURT: Right. And the question is at the Civil Rights meeting somebody from management said that the OFCC was concerned about the fact that there were subdivisions with all of one race in it and they wanted something done about it.

THE WITNESS: They could have.

THE COURT: Okay.

THE WITNESS: They could have.

BY MS. GARTRELL:

Q But you have no memory one way or the other?

A No.

Q There came a time when the trades and crafts job classifications were raised by two classifications across the board, is that so?

At the time that that occurred, was it your understanding that the company was also going to raise the scores required on the Wonderlic for employees to get into those trades and craft subdivisions?

A I'm not aware of it.

Q The company never told you that they were going to raise the Wonderlic score requirements for employees applying for the trades and craft subdivisions?

A They may have. I don't recall.

[23.116] Q Neither you nor Local 1165 or in the person of anyone else as far as you know ever investigated whether or not the Wonderlic was a valid predictor of job success, did you?

A We never did any detailed research, but we always opposed the Wonderlic test and any other test.

Q But you never investigated whether or not it was a valid predictor of job success, is that so?

A No. I don't think that we ever did.

* * * *

REDIRECT EXAMINATION

BY MS. CLARK:

Q Mr. Lawrence, did the union to your knowledge ever undertake validation studies of tests anyway?

A Yes. I remember this vaguely. Prior to the strand cast being installed at Lukens Steel Company I think the local did some kind of research, and I think we even called in our expert Frank Lunney. And [23.117] I think there were communications back and forth with the local, Mr. Lunney and our International office regarding the testing procedure for employees being put into the Strand Cast Subdivision.

* * * *

[23.120] DONALD Y. SMITH, sworn.

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. Smith, you are currently employed by Lukens; is that correct?

A Yes, I am.

Q You are a shop steward in Local 1165?; is that right?

A Yes.

Q Do you hold any other position in the local?

A No.

Q Mr. Smith, Reverend Mobley testified concerning an incident—concerning his schedule in which you were involved. Have you had an opportunity to read over Reverend Mobley's testimony?

A Yes, I have.

Q Do you recall the incident in question?

A Yes.

Q Tell the Court what happened.

A We were both scheduled to grind in nickel clad. At 4:30 the schedule came out, and we both looked at the schedule. And around—I guess it was 3:30 the schedules come out, a quarter to 4:00—

[23.121] THE COURT: Excuse me, you're mumbling. It will be hard for people to understand what you are saying, sir.

BY MR. SILBERMAN:

Q You said 4:30 the schedules came out?

A 3:30, quarter of 4:00, when we were getting ready to quit our shift a clerk came out and told me my schedule was changed to plasma cutter. He said: "Okay, make sure you finish with the nickel clad."

Q Now, did you ask to have that change made?

A No, I did not.

Q Did Reverend Mobley have more or less subdivisional time?

A Ten years more.

Q Why wasn't he given a plasma cutter job?

A He wasn't qualified.

Q What else happened in this incident?

A Well, Jim came to me and said: "If you can get your schedule changed, get mine changed."

Q Jim is Jim Mobley?

A I went to look at the schedules, the bulletin board; and I looked at the jobs I knew he did. And they were all filled with senior men. So I told him what I saw. He said: "Well, can't I still get any other job that I know?" [23.122] I went and I talked to supervision, and they said he had all 2's and he would have to wait seven days.

Q When you say he had all 2's, when you put in a preference under computer schedules these were two jobs?

A Not preference; he didn't want them.

Q Non-preferred?

A Non-preferred.

Q On every job which Reverend Mobley put in for a preference the people holding that job that work week were senior to him; is that right?

A Yes.

Q Was it your conclusion that he was properly scheduled?

A Yes.

Q Did you report back to him that conclusion?

A I come back and told him and I said, "I can't do nothing for you?" He said: "Well, you got your schedule changed." He was mad. I couldn't do nothing about it.

Q Did Reverend Mobley's race have anything to do with the way you handled this incident?

A No.

* * * *

[23.167] BEN ELLIOTT, sworn.

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. Elliott, you are employed by Lukens; is that right?

A That's true.

Q What subdivision do you work in?

A Engineer, transportation and service.

Q Engineer subdivision of the Transportation Department; is that right?

A Correct.

Q How long have you been in that subdivision?

A Since 1959.

Q Are the engineers in—what zone are the engineers in for grievance purposes?

A Zone seven.

Q What job did you hold before you were an engineer?

A I worked as a trackman and as a laborer.

Q How about a conductor? Were you ever a conductor?

[23.168] A Yes.

Q Conductors and trackmen are in Zone Seven, too?

A Yes.

Q You were elected an assistant Grievance Committeeman in 1974; is that right?

A That's true.

Q Then in March 1975, when Jim Brown became the chairman, you moved up to be committeeman from Zone Seven; is that right?

A That's right.

Q You were reelected as assistant committeeman in 1976; is that right?

A That's correct.

Q And when Jim Brown was elected as chairman, you again moved up to the committeeman for Zone Seven; is that right?

A That's right.

Q You held that until 1979?

A That's true.

Q And you are presently the Assistant Committeeman for Zone Seven?

A Yes.

Q Were you on the Negotiating Committee in 1977?
A Yes.

* * * *

[23.182] Q Are you aware at any time since you have been employed at Lukens of any racial discrimination by the company against any of its hourly black workers?

A Yes, yes.

Q And what is your awareness of that discrimination?

A My awareness of that discrimination in job assignment.

Q Now, when you say "job assignment," do you include in that transfers and promotions after an employee comes into the company?

MR. KLUGHEIT: Your Honor, I'm going to object to leading questions in this area. I think [23.183] it is outside the scope, and Mr. Elliott is a member of the plaintiff class. I really think this should be done as direct.

THE COURT: Overruled. This is cross-examination.

MR. KLUGHEIT: Your Honor, I just do want to note this is not in the scope of direct examination.

THE COURT: I don't really care what you think. I have ruled.

MS. GARTRELL: Read back the question, please, Mr. Richardson.

(The following question was read aloud by the reporter:

"Question: When you say 'job assignment,' do you include in that transfers and promotions after an employee comes into the company?")

THE WITNESS: I'm only specifying jobs in my department for an example such as track people.

BY MS. GARTRELL:

Q Well, are you including not just the first job that an employee gets when he is hired but jobs that he may get?

A Well, if you want to go into that, I can say [23.184] yes because I was one of the victims.

Q You mean you were discriminatorily placed when you were hired?

A Yes.

Q What job did you want and what job did you get?

A If I'm not mistaken, I applied for a crane runner job and I received a laborer.

Q In addition to that discrimination, have you observed other discrimination against other black employees?

A Yes.

Q And does that include the discrimination in placement, transfers and promotions after they are initially hired?

A Yes.

Q Has that happened to you personally?

A No.

Q Have you observed that not only in your department but in other departments within your zone?

A I have seen it; but I can't put my hands on it, how it came about, yes.

Q At any time that you have seen it, have you or any other union representative filed a grievance claiming discrimination as to that particular incident [23.185] that you saw?

A No. As I said before, I didn't know how it came about.

Q You mean you didn't know who was responsible for it?

A Correct.

Q And did you make an investigation to find out who was responsible for those incidents that you were aware of?

A No, I didn't.

* * * *

[23.187] REDIRECT EXAMINATION

* * * *

Q Was there ever a time when a black employee came to you as a grievance man for assistance with a complaint of racial discrimination and you didn't do anything about that complaint?

A No.

Q You always would investigate and follow up?

A Always.

* * * *

MICHAEL J. KERETZMAN, sworn.

[23.188] DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. Keretszman, you're employed by Lukens; is that right?

A Yes.

Q When did you start work?

A April 9, 1973.

* * * *

[23.196] Q You were a member of the apprentice committee; is that right?

A Yes; I'm a member.

Q You were appointed by Mr. Pilotti?

A Yes, I was.

* * * *

[23.196] Q Are you Chairman of the Apprentice Committee?

A No, sir. There is no chairman.

Q Now, just so we are clear, the Apprentice [23.196-A] Committee has union members and company members?

A Three union members and three company members.

* * * *

[23.197] Q When did the apprentice committee start meeting?

A I think our first meeting was in August sometime.

Q Has any question or issue arisen in the meetings of the apprentice committee concerning the company's use of tests?

A Yes, there has been.

Q Will you tell the Court about that issue?

A We requested to the company several times to see the entrance tests prior to going into the core program, at which time after great deliberation with the company, the company agreed to let us see the entrance tests.

At one of the apprenticeship meetings, they presented us with the entrance tests, let us review them, and they explained to us how the testing was done, at which time we protested and argued about certain questions on the test not being—I should say being of algebra and geometry background and of that nature, and the company assured us that it wasn't.

They said that it was taught in school, everyone in school was taught that type of math. And I on behalf of the apprenticeship committee argued that it wasn't, that you could go all the way through school without having any type of geometry or algebra.

Q Were you able to persuade the company that the [23.198] tests should be changed?

A No, we were not.

Q Was the company able to persuade the union that the test was a good test and should be kept?

A No.

Q You reached impasse on that?

A That's correct.

Q Was any question raised at that meeting about the impact of the test, particularly on black employees?

A The question was brought up about whether more blacks than whites were failing the test, and at which time Chuck Berline said no. And we also brought up the

question whether youth versus age, which I should point out that we were concerned about men being out of school 10, 15 years, how they were doing in a test, at which time Chuck Berline made the statement that the men who were out of school longer seemed to do better than the men who were straight out of school.

Q Is your understanding that a grievance is pending about this test that you saw?

A I have been told.

* * * *

[24.3] CHARLES WITTE, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. Witte, you are the president of Local 2295, Steel Workers Union?

A Yes, I am.

Q You have been president since 1967; is that right?

A I have.

* * * *

[24.14] Q Now, Mr. Samuel Baxter, I believe it was, testified concerning a complaint that he was not getting to do stainless welding.

Let me first ask, did you ever do stainless welding?

A Yes, I have.

* * * *

[24.15] Q How would you compare the desirability of the stainless welding job to the welding on carbon steel?

A There's no difference, as far as one job's no more desirable than the other.

Q Was a stainless job any cleaner or dirtier than the carbon job?

A No.

Q Did it pay any different?

A No.

Q Did Mr. Baxter ever complain to you about not being permitted to do stainless welding?

A No.

Q When would you say that the stainless welding program ended welded products?

A In the early sixties.

* * * *

[24.33] FRANK MONT, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. Mont, by whom are you employed?

A United Steel Workers of America.

Q What's your position?

A I'm director of the civil rights department.

Q Would you briefly review your—that's of International Union?

A That's right.

* * * *

[24.40] Q Now, prior to becoming—when you were on the District 7 staff, in the District 7 office, did you have some familiarity with the civil rights structure?

A Yes.

Q Would you briefly describe that structure for me, please?

A Well, in 1966, it was mandated that each district establish within that district a civil rights coordinator and there was a civil rights coordinator established in District 7.

I had quite a bit of contact with that civil rights coordinator. Periodically they would have civil rights conferences and seminars, where they would have the local union people come in and this would be our educational training for those people, in order for them to be equipped with handling civil rights problems.

He also used to have occasions to speak to the staff at staff meetings and, customarily, would give some type of report at our annual district conference.

Q Did the civil rights coordinator have any role with respect to complaints from local union members in the district?

[24.41] A Yes, he would receive complaints from members within the district. He also had a responsibility to educate the staff and assist them in investigations of allegations of discrimination.

He had a role also to play as a representative of the district director, to see that each local union establish within that local union a civil rights committee.

Q When the civil rights coordinator received complaints, what would he do?

A Normally, he would contact service and staff representative and either they would decide between them—he would come out and conduct the investigation or the service and staff representative would conduct the investigation and after the investigation was completed, if it was not conducted by the coordinator, the service and staff representative had to give the coordinator a report, and then the coordinator would make a determination based on the report.

Q I should have asked you, were you civil rights coordinator for a period of time?

A Yes, I was.

Q When was that, in District 7?

A Yes, in District 7.

Q When was that?

[24.42] A I became the coordinator, I believe, in 1977.

* * * *

[24.47] Q Let me ask you to take a look at the document that's—what previously had been marked as Plaintiffs' 932.

Do you have that in front of you?

A Yes, I do.

Q Did you receive a copy of that letter, which is the front page of that exhibit?

A Yes, I did. Actually, it wasn't sent to me, but I was given a copy.

Q How did it happen to come to you?

A I was given a copy of this letter by director James M. Magee, a director of District Seven.

Q Do you know why he gave you this?

A Yes, he said—also, vice-president of Human Affairs, [Leon Lynch], and they wanted me to go [24.48] and investigate the human affairs.

Q What position were you holding at this time?

A I was Civil Rights Coordinator. I was holding quite a few positions. I guess you would say, I was sort of like an assistant to the director.

Q After you received the letter, what did you do?

A I tried to establish a meeting.

Q How did you go about doing that?

A I tried to get in contact with the writer of the letter, Brother Leon Whitfield.

Q And what happened?

A I failed to make contact with him.

Q Did you have anybody else from the district office also trying to get in contact with him?

A Yes, I do remember there was a secretary who still works for the district office, Pearl Jones. On several occasions, I had her call a set of numbers that we had received trying to reach Brother Whitfield.

Q And I take it you were unsuccessful?

A I was unsuccessful in doing that.

Q So what did you do?

A Then I wrote to Brother Whitfield.

Q Take a look at the next to the third from the last page of Plaintiffs' 932.

Is that the letter that you wrote?

[24.49] A Yes, this is the letter that I wrote.

Q Now, prior to writing that letter, had you had—had you been able to reach Mr. Whitfield on the phone?

A No, I hadn't. I had two numbers and the two numbers are right there in the letter. One number I got no response from at all. The other number they kept saying they don't know who he is.

Q After you wrote this letter, what happened?

A Mr. Whitfield got in contact with me.

Q And what did you do?

A Then I told him I wanted to have a meeting and I wanted to set up a date for the meeting and things of that nature, and he said okay.

Q Where was the meeting initially set up?

A The Malvern Subdistrict Office.

Q Was there—did you initially set it up in the Philadelphia District Office and then change it?

A No, I didn't.

Q Why did you set the meeting up for Malvern?

A It was more convenient for those who were going to participate because at that meeting I wanted to have the president of the local union—I wanted to have the vice-president of the local union who was also chairman of the Grievance Committee. I also [24.50] wanted to have the staff representative who was assigned to the local union.

Now, the staff representative worked out of the Malvern Subdistrict Office, plus the plant was located near the Malvern Subdistrict Office.

Mr. [Whitfield] worked out in that area, so it was simpler for me to just go out there, rather than have everybody else come to Philadelphia for my convenience.

Q Why didn't you have the meeting at the local union hall?

A I felt possibly Mr. [Whitfield] would feel intimidated by it.

I would rather take the meeting away from the local union hall, so he would feel more at ease, so to say, to put it in a neutral setting; the Malvern Subdistrict Office is our office.

Q When you say, "our office—"

A The International's office.

If we went into a local union hall, they would have possibly people who would be around the hall and possibly could get involved, so I wanted to take it completely out of that setting and put it in a setting that he would feel as free as possible to discuss what was bothering him.

[24.51] Q Was this the standard procedure that you followed in handling complaints?

A Yes, as much as possible. I always tried to take it in a subdistrict office.

Q Now, what happened? Did you actually hold the meeting with Mr. Whitfield and other individuals?

A Yes, we did.

Q What took place at that meeting?

A Well, Mr. Whitfield was present. He also came with another member of the union, Mr. Brewer, president of the local union, Benny Pilotti, vice-president and chairman, James Brown were present.

We had two staff representatives who were present, [Horsey] Zitarelli, who was recovering a—

Q Earl Zitarelli?

A Yes. And we also had Burt Howe present, who was assigned in Earl's absence, and I was also present.

Q What was the major issue or complaint that Mr. Whitfield raised at that meeting?

A Well, Mr. Whitfield raised a question concerning some duties of truck washing and he felt that—well, these duties were properly assigned to people and things of this nature. When I first started getting involved with Mr. Whitfield on this, I felt possibly there [24.52] was a question there of discrimination, that here we have a situation where they were forcing black employees to do something that white employees were not required to do.

Q Why did it matter to you whether there was discrimination or something other than discrimination?

A Well, one of my concerns was being a Civil Rights Coordinator and the question coming from a black employee, that naturally I wanted to look to this issue to see if something was going on there in a discriminatory manner and that we wanted to get at it right away because they're one of my overriding responsibilities, being a coordinator, to look for areas of discrimination and to try to do something about it.

[24.53] Q And what did you—through your conversation with Mr. Whitfield, what did you conclude about this particular matter?

A What had happened in this particular matter was duties that were described within the job description, there were understandings reached by the local union people and their elected representative and management concerning these duties, and it was not a situation where black employees were being compelled to do something that white employees weren't. All employees either had this opportunity or didn't have the opportunity. Race didn't enter into it at all.

So then I made the determination that this then came under the enforcement of the collective bargaining agreement, and if there was anything wrong with it, then it should go through the normal grievance procedure.

Then it got into the area of the staff representatives. That's their primary responsibility.

Q If you had concluded that this was in fact a case of racial discrimination, would you have responded any differently?

A Yes, quite differently because I feel that as a district civil rights coordinator that my authority [24.54] superseded that of staff representatives, and then I should then get personally involved my own self, and it's just not a question of enforcement of the collective bargaining agreement.

Q After you decided this was not a discrimination matter, what did you tell Mr. Whitfield about this matter?

A That the matter should be taken up with either his local representatives or should be taken up with staff representative who had been assigned to services of the local union.

Q Mr. Whitfield raise any other issue that you recall at that meeting?

A Well, there was also another issue which concerned a crane operation or something similar to that. I believe this is one of the things that Mr. Brewer was talking about, but the determination was made in that area it was not a question of race; it was a question of enforcement of the collective bargaining agreement.

I informed him similarly that this is a matter that should be handled through their local representatives and also with the staff representative.

But prior to leaving the meeting Mr. Whitfield raised several other issues.

One of the issues was concerning a test. [24.55] He had a relative who had applied for a promotional opportunity, but in order to secure the job he had to take a test.

He went in and he took the test and he failed the test. He was retested by the company. He failed the second test. Mr. Whitfield was quite disturbed about this, because he had informed me that this individual had a lot of formal education and he could see no way with his educational background that this relative of his could have failed the test.

I became quite concerned about this because the relative was black and I thought possibly once again there was an area where something was happening to an individual possibly because he was black.

I requested the chairman of the grievance committee to contact the company and investigate this whole testing matter, and I also told him that I wanted him to report back to me and Mr. Whitfield the results of that investigation.

Q The chairman of the grievance committee, who would that be?

A James Brown.

Q Now, at this meeting was there any discussion about alleged inadequacies on the part of the local [24.56] leadership?

A Yes. Mr. Whitfield made charges against—made accusations against the leadership of the local union.

Basically, what he was saying is that they did not run the local union properly, they didn't conduct the meetings properly, they were not adequate in the defense of people and things of this nature.

I responded to Mr. Whitfield saying that they were the duly elected representatives of the people and that as long as there was a representative according to our election procedures and manuals, that they have to hold their office, and if he felt that they were not going on their responsibilities in a form or fashion that's dictated by our constitution, then he could bring charges in the proper form, or failing that, if he thought there was questions of impropriety going on there, then he has recourse to the staff representative.

Each local is assigned a staff representative. That staff representative's responsibilities include attending the local union membership meeting, plus every staff representative works out of an office.

There's normally a phone and a secretary there. So if you want to have access to the staff [24.57] representative, you either could do it at the membership meeting or you could either make a call to that office.

Now, he's not always in that office, but there is normally somebody in there to take messages.

Q You explained all this to Mr. Whitfield and Mr. Brewer at the meeting; is that right?

A Yes, I explained that to him and also told him if he felt he had not been properly satisfied with his complaints by the staff representative that the established policy in this district was that he has the right to go to his subdistrict director and also bring forth his

complaints concerning the operation of his local union or his staff representative with the subdistrict director, and if he feels he is still not satisfied, then he has recourse to come to the district office and to make an appointment with the district director, and I assured him that his allegations would be investigated.

Q Mr. Whitfield testified at your meeting with him you told him that if he was raising matters relating to civil rights or discrimination you wouldn't hear it or didn't want to get involved.

MS. GARTRELL: Objection, your Honor. That is not an accurate statement of the testimony.

[24.58] THE COURT: Well, we will find out from the witness what happened.

BY MR. SILBERMAN:

Q Did you say anything like that?

A I don't recall ever being—I think there's no truth in that statement, because I know, because of my responsibilities as a civil rights coordinator, and because of my interest in this area anyway, that one of the things I always would be sensitive to and always be responsive to is any areas that relates to discrimination.

THE COURT: You have answered the question. What is the next question?

BY MR. SILBERMAN:

Q Have you ever told any employee, any union member that you would not listen to civil rights or discrimination matters?

A Never.

* * * *

[24.64] CROSS-EXAMINATION

Q At this meeting that you had with Mr. Whitfield and Mr. Brewer, wasn't one of the complaints then Mr. Whitfield and Mr. Brewer had that the representation of their local union was not at that moment adequately representing a group of black laborers whose jobs were being changed by the company against their will?

A Yes, I think I recall that, yes.

Q Do you recall the term supra laborer being used at that meeting?

A No, I don't.

Q Do you recall Mr. Whitfield and Mr. Brewer complaining that the company was changing the duties of the jobs of these black men and it was going to result in elimination of jobs which were held by black men, and that this violated the contract?

A My recollection of the explanation that I received was—I think you are referring to the duties of truck washer?

Q No, I'm not.

A Then I don't recall specifically what you are talking about.

Q Do you remember what job Mr. Brewer said he held [24.65] at Lukens?

A I believe at the time of the meeting I think he was a crane operator.

Q Do you remember what department he was in?

A No, I don't.

Q You don't remember anything at all about a complaint that the union representatives were selling these black guys down the river, these men who had labor jobs, whose jobs were being redesigned and redefined between contracts? You have no memory of that?

A I remember—I don't remember it being referred to as black guys. I remember that there was a question of about some jobs that were being redefined. It was my understanding that an understanding had been reached by the local people in that area, along with their elected representatives, to take certain duties or something, that they either had the right to agree to do it or not agree to do it, but it was something that was reached after a considerable amount of discussion.

Jim Brown said that he was aware of it, that he had participated in it, and that if my recollection serves me

correctly, that it was voted on by the people in that area, and this was the outcome.

Q Who told you it was voted on?

[24.66] A Jimmy Brown.

Q Wasn't it the claim of Mr. Whitfield and Mr. Brewer that the representation over that issue had been totally inadequate and in fact had been a breach of duty to black members of Local 1165?

A I don't recall him saying it was a breach of duty as relates to black members of Local 1165. He questioned what was going on, and he had strong feelings about the fairness of it.

* * * *

[24.69] Q You did perceive Mr. Whitfield's complaint as a civil rights complaint, didn't you?

A When I first got involved in the complaint, I didn't know what it was. He wrote concerning some operations—he wrote concerning the operation of the local union and his officers, and he asked somebody to come in and investigate them, and when I went out there I didn't know what the problem was until we sat in the room and he started then divulging to us what was concerning him.

Q You didn't talk about it on the phone before the meeting?

A No, I didn't.

Q After that meeting, you didn't have any doubt that he was making a civil rights type complaint, did you?

A Certain aspects of it—that aspect of the test concerned me.

Q And the only response you ever got from Local 1165 concerning the test aspect, which you did find out that this employee had flunked, that indeed his test had been graded properly; is that right?

A That's right.

* * * *

[24.70] REDIRECT EXAMINATION BY MR. SILBERMAN:

Q What was the allegation that Mr. Whitfield was making with respect to the test?

A That he felt that this individual had not been graded properly and he felt that it was possibly because he was black.

Q Did he suggest to you that the test itself was a bad test or an unfair test?

A No, he did not.

* * * *

[24.72] THOMAS JAMES, sworn.

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. James, you're employed by Lukens; is that correct?

A Yes.

Q When did you start working?

A December 8, 1967.

Q And where were you first assigned?

A On what we call the west side.

Q Is that where you still work?

[24.73] A Yes, that's where I still work.

Q You became an assistant Grievance Committeeman in June of 1975; is that right?

A Yes.

Q You were elected as committeeman in 1976?

A Yes.

Q You were reelected in April of '79?

A Yes.

Q And you became a chairman of the Grievance Committee in October of '79; is that right?

A Yes.

* * * *

[24.83] Q Take a look at Union 653, if you will.

You have that in front of you?

A Yes.

Q Do you recall this complaint?

A Yes.

Q Now, the copies are not very good.

Let me ask you, am I correct in saying that it states, denied equal opportunity to work overtime on his bidded job?

A Yes.

Q What was the nature of the complaint—did you talk to Mr. Young about this situation?

A Yes.

Q What was the nature of the complaint that he brought to your attention?

A He was complaining that he was not getting the overtime on the job in which he was working. He was saying that the foreman was illegally soliciting the other employees to work in that area, work in his area on his job, and that was the nature of his complaint [24.84] at the time.

Q Did he make any complaint that he was—the amount of overtime that he was receiving was less than the amount of other employees?

A No.

Q Get any complaint about the financial loss that he was suffering?

A No.

Q What did you do with this complaint?

A Well, I filed the 520 form and—

Q That's the first page?

A Yes. I filed this form here and we—in our civil rights meeting, we voted—brought it to the company's attention and we had a joint investigation on it. We went to his department. We checked the overtime list and we found that he had not been working, had not been solicit[ed in] his department.

At the time we met, the foreman was guilty of improperly soliciting and he was already transferred to another area, so we got a promise from the company that it would be a cease and desist of the practice and that the foreman wouldn't solicit the overtime himself.

He would go to the Crane Department and have the Crane Department solicit the overtime, [24.85] like they should have been.

Q Was Mr. Young present for any of the meetings that you held in this?

A He was present at this meeting.

Q And did he say anything to indicate how he felt about the resolution?

A Well, it's my understanding that it was settled to the satisfaction of both parties.

* * * * *

[24.99] Q Looking at May 31, 1978, the minutes of the civil rights committee, the first paragraph there, paragraph numbered 1, union agreed to provide statistics to substantiate its claim of disproportionate discharges at a subsequent meeting of the committee.

Has the union ever come up with those statistics?

[24.100] A No, not that I recall.

* * * *

[24.106] Q Do you recall whether any grievances have been filed against discharges of probationary employees in their first 60 days with the company, on the grounds that it was discriminatory?

A We don't file grievances for probationary employees.

Q Are you aware of Article 11(i) of the 1977 agreement? I think there was a parallel provision in the 1974 agreement, which says: "New employees and those hired after break in continuity of service, will be regarded as probationary employees for the 520 hours of actual work, and will receive no continuous service credit during such period. During such period, probationary employees may

be laid off or discharged, as exclusively determined by the company. This provision will not be used for purposes of discrimination because of race, color, creed, national origin, or sex, or because of membership in the union."

[24.107] Q Were you aware of that provision?

A Yes.

Q You haven't filed any grievances under that; is that right?

A Not under the probationary—the 520 hours.

* * * *

REDIRECT EXAMINATION

BY MR. SILBERMAN:

Q Did any probationary employee ever come to you and ask you to file a grievance under the discharge, such as the portion that Mr. Ewing just read?

A There have been people to come to us, but as new hires we have no jurisdiction under this.

* * * *

[24.108] DEE GILLIAM, sworn.

* * * *

[24.109] DIRECT EXAMINATION

BY MS. CLARK:

Q Mr. Gilliam, what is your position?

A I'm director of the Arbitration Department for the United Steel Workers.

Q That's the International Union?

A Yes.

Q How long have you held that position?

A Since 1975, January 1st.

Q What position did you hold immediately before that?

A I was the Assistant Director of the Contract Administration Department.

Q Is that the same department as the Arbitration Department?

A Yes, the Contract Administration Department was divided on January 1, 1975, into the Wage Division in the Arbitration Department.

Q Before you were Assistant Director in the [24.110] Contract Administration, what was your position?

A I was a technican in the Contract Administration Department.

Q When did you come to the International Union?

A January 1, 1967.

Q Prior to that, where were you employed?

A I was a staff representative in District 32, which was headquartered in Milwaukee, Wisconsin, for five years.

Q And before you were employed as a staff representative, did you have some experience with the steel workers local union?

A I was a local union officer for fourteen and a half years.

Q What was the highest office that you held in your local union?

A I was president of the local union for three terms, about five years and a half.

Q Would you describe briefly the functions of the Arbitration Department?

A The Arbitration Department advised technical service to our various districts upon request from a district director.

We handled some of the more complicated arbitration cases; we're involved in national [24.111] negotiations in the basic steel industry, aluminum industry, canning industry and many of our fabricating contracts.

We participate in educational seminars. We digest and send out copies of our arbitration decisions.

We publish a monthly news letter on arbitration, and an arbitration bulletin.

We public a steel workers handbook on arbitration and we handle almost any problem of a contractual nature that's not handled by one of our departments, such as the Pension and Insurance Department or the Wage Division.

Q Do you have a special interest in the subject of testing?

A Yes, I do.

Q Could you explain very briefly how you became interested in that subject?

A Well, when I worked in the plant, I worked for Fairbanks-Marston, a department in Wisconsin. It was a plant with approximately 4600 people in the bargaining unit, approximately 900 of them were blacks.

We were all working in the brass foundry or the iron foundry. I asked to become an apprentice and I was given a battery of tests and [24.112] told that I failed and shortly after that, I enrolled in White College at night. I took some courses in industrial psychology and later found out that I had not failed the tests, I had in fact passed it and it had peaked my interest in that area.

Q Other than the industrial relations or industrial psychology courses that you just referred to, have you had any other training on the training of testing?

A Yes. I participated in the national seminar on tests at the University of Iowa in 1967, put on by the AFL-CIO.

I was back the following year as one of the instructors.

I have participated as an instructor at at least five or six seminars for the AFL-CIO since that time.

Q Have you had any training at Oxford University?

A Yes, I was awarded the John R. Mitchell Scholarship by the Canadian Steel Workers Union. I studied at Oxford for a while and I did some work in the area.

[24.113] Q Since you have been employed in the International Union headquarters, what work have you done on the subject of testing?

A Well, I served on the testing committee which was set up in the 1965 agreement, and I have participated in the negotiation of the testing language and all the basic steel contracts since 1967.

Q Is there anyone on your staff who has a background in testing?

A. Yes. I hired a young lady named Patty Seehafer approximately two years and a half ago. Patty is from the University of Wisconsin and majored in industrial psychology.

Q Between yourself and your staff, approximately how many testing cases do you handle in arbitration in a year?

A I'd say roughly about a dozen cases or so.

Q Are there others that you offer advice on, to staff representatives on?

A Yes, there's quite a number of times when a staff representative is prepared to arbitrate a case dealing with testing that we will either bring him into the Pittsburgh office and spend the necessary time to instruct him on how to present the case or we will go to his location and do the same thing.

[24.114] If it appears to us that the staff representative can adequately present the case we will ask him to do so. If not, we will present the case.

Or if, if there is a case that we think has company-wide or industry-wide ramifications we would present that case ourselves.

Q Is your department presently involved in any kind of testing issue at Lukens?

A Yes, we are.

Q And what is being done by your department?

A At the current time we have requested from the company by letter a copy of the test, the test manual, a copy of the validation data and certain other material. We are awaiting receipt of that material to make an analysis of the case, and that case will probably be presented by Patty Seehafer from my staff.

Q Presented where?

A In arbitration.

THE COURT: When did you write the letter?

THE WITNESS: I don't know the exact date.

THE COURT: Well, give us your best estimate.

THE WITNESS: Patty Seehafer wrote the [24.115] letter to the company, one of my technicians, I would say during the last three months.

THE COURT: Thank you.

BY MS. CLARK:

Q You said that you were part of the negotiations on testing each year. Did that include 1968?

A Yes, it did.

Q What provisions were negotiated at the industry level that year on testing?

A In 1968 we made the first breakthrough and we were able to negotiate the language which required the company to have job-related tests.

THE COURT: I don't think you mean that, do you? You didn't require the company to have job-related tests. But if they were going to have tests, they had to be job-related.

THE WITNESS: That's right.

BY MS. CLARK:

Q Was there some revision in the contract with respect to racially biased tests?

A Yes, there is.

Q When did that contract take effect?

A The contract took effect on August 1, 1968. The testing language dealing with the job-relatedness was delayed for one year to August 1, 1969. The [24.116] reason for that was to allow the company the chance to take out the tests which they were currently using and to replace them with the job-related tests.

Q Were there any improvements made in the testing language in 1971?

A Yes, there was.

Q What were some of the significant ones?

A In 1971 we were able to extend the test language coverage to the trade and craft jobs and apprenticeship jobs which we were not able to cover in 1968.

Q Was there anything on written tests as well?

A I believe we added a clause that either in '71 or '74 that said no written test to be given on a job unless the job involved reading and writing.

* * * *

[24.120] Mr. Gilliam, before testing language was in the basic steel contract, what basis was there in basic steel contracts for a grievance over testing?

A We argued grievances before under the seniority provision of the contract.

Q What kind of success did you have on that?

A Very poor success.

THE COURT: There is no such thing as poor success. There is either success or no success.

THE WITNESS: Well, we had little success.

[24.121] BY MS. CLARK:

Q Was there a time when the union also took to arbitration an argument that the company had no right to test at all?

A Yes, there was.

Q What kind of success did you have on that?

A Well, on those we had no success.

Q When the testing language was first placed in the basic steel agreements, what tests were widely used throughout the basic steel industry?

A Two tests which I encountered most were the Wonderlic and the Bidder Mechanical test of mechanical comprehension.

Q Did the industry stop using those tests when the testing language took effect?

A They did not.

Q What steps did your department take to try to eliminate the use of those tests?

A We became involved in almost every arbitration case that was called to our attention, in an effort to try to dislodge those tests from the industry.

[24.122] Q What result were you hoping to get in those arbitration cases?

A I was hoping to get a ruling from an arbitrator that these tests were not applicable to these jobs in the basic steel industry.

Q Would such a ruling have any impact beyond the individual grievant?

A I thought that it would if I could get the right type of case because the testing language was standard in at least eight or nine of the basic steel companies, and I thought with the same test being utilized and the same language in the agreement, I could get a precedent, which I would carry from one company to another.

Q Were you efforts to do that successful?

A They were, but not until the last year or so.

Q What kind of problems did you run into?

A Well, I ran into great difficulty in isolating the test issue in the arbitration cases. Companies started to pick up a lot of different departments in setting up the criteria, in setting up a successful candidate for the job, other than testing.

Q I direct your attention to Union 175 in front of you. The pages at the beginning have been stamped 465. [24.123] Is that an example of the phenomenon you have been talking about?

A Yes, it is.

Q Why did that present a problem in your arbitration program?

A Well, it made the union approach the cases on lots of different issues, other than tests.

For example, in this particular case, the company had a verbal interview, which the applicant had to submit to. They had—they checked his related training and his background, his actual craft experience, and in many instances, when we would get to arbitration, would say we did not decide to award this job on the basis of testing, but we decided to award it on the basis of his past experience.

Q How then did the arbitrators' decisions breakdown in those kinds of grievances?

A Until last year, the arbitration—arbitrator ruled very narrowly on these cases and they would rule specifically for that grievant in that particular case, and that case only because of the many factors involved.

Q Were there other problems that you had in developing grievances to take to arbitration?

A Yes, there was.

[24.124] I spoke at many conferences at which I talked about the subject, and there always seems to be in many cases a hesitation on the part of the people that were involved in these cases, to some of them, to file grievances.

It seemed to me, and this is my own personal opinion, that sometimes a person that failed a test, was reluctant to tell a union representative because it was a matter of pride in him that he had failed to pass a test, and there was a great difficulty in getting grievances filed in this area.

Q Was there anything that the companies, that you were experienced with, were doing that seemed to prevent you from getting rulings?

A Well, the companies in some cases—they wouldn't grant grievances in the third step and several cases that we were preparing go to arbitration on, suddenly the company would grant the grievance and agreed to put that grievant on the job. It was my own personal opinion that this saved the testing program for the company because there was nothing for us to arbitrate and all they really lost was that they awarded the job to whoever was in the grievance, and they maintained their testing programs.

Q Is there some reason why your office can handle [24.125] grievances on testing, more easily than local testing programs can?

A Testing grievances are much more difficult than testing—I would say with the exception of an arbitration, it is complicated, sensitive cases. Testing cases are probably the most technical and most difficult cases to arbitrate.

Q Is there anything about the arbitration hearings, themselves, that also makes it better for your office to handle them?

A Well, the cases are usually very long. I don't think I've been involved in an arbitration case that involved testing that would last more than five full days. This compares with the normal arbitration case. We could usually hear two in a day. The expenses of arbitrating

a testing case are a great deal more than a normal case because we utilize the services of an expert witness.

The cost of a case, the time that is involved and the fact that they're technically more difficult than others.

Q Because of these difficulties, did you develop some kind of strategy for dealing with the testing issues?

A Yes. I developed the technique of a special [24.126] way to arbitrate these cases for the steel workers, and I tried to seek out cases that had either company-wide or industry-wide importance to them, and we tried to zero in on those types of cases.

Q Is Union 177 an exhibit there? How is it related to your program?

A Yes, it is.

Q Can you explain how that arbitration award came about?

A Yes this was an arbitration case at the Edward Thompson Irwin Works of U.S. Steel. This was the type of case that I was talking about, when I said we were looking for the ideal case to arbitrate.

MR. LANDIS: Excuse me, your Honor, does the objection that I noted earlier carry on to this?

THE COURT: Affirmative.

MR. LANDIS: Thank you.

THE WITNESS: The reason I thought that this case was important is because for the first time we were able to find a grievance where the company had answered in the second step and began in the third step that the management representative concluded that tests were the sole criteria which determined that these individuals did not get the job.

[24.127] BY MS. CLARK:

Q What was the outcome of this grievance?

A This grievance was sustained in arbitration and the cause of it, the entire test battery that U.S. Steel was utilizing was taken out.

Q How broadly was U.S. Steel using that test battery?

A I was told by the company that they were utilizing this test battery in every plant of U.S. Steel.

Q Approximately how many testing cases have you personally presented to an arbitrator?

A I would say better than twenty.

Q From that experience, can you say whether steel industry arbitrators are competent to handle the issue of job relatedness under the contract?

A I would say they're competent to handle.

Q What is your department's win-lose record on arbitrations under the job-related language?

A Basic steel?

Q Yes.

A We never lost a case in basic steel that I know.

Q Have you had some experience with the federal government enforcement agencies about the job-related standard that they enforce?

[24.128] A Yes, I have.

Q How does the contract standard in basic steel compare to the government's view of job-relatedness under the law?

THE COURT: Which government are you talking about, the FEA or the EEOC or the Department of Justice?

MS. CLARK: Mr. Gilliam can tell us.

THE WITNESS: Well, I had discussions with Mr. Bock Moore, who is the Justice Department's representative on our committee which oversees the consent decree of the steel industry.

Bock Moore explained to me how the government explained job-relatedness and he said, for example, if the company was utilizing a philosophy, a test to select electricians from the company could prove to them that the employees that pass that test made better electricians, he would consider job-relatedness and we had quite a

discussion and he said well, Dee, I'm not saying that this is the same job-relatedness that you have in the basic steel contracts.

Q Can you explain what the job-relatedness standard means under the—

A Job-relatedness means to me that all of the tests must pertain to specific requirements of the [24.129] job involved.

Q Have arbitrators adopted that interpretation of the language?

A I believe they have.

Q Is there an example in front of you of such an arbitration decision?

A Yes, it is Union Exhibit-177.

Q Can you direct us to the page which such a ruling is made?

A I think on page 41—it starts with paragraph 41. Page 31, paragraph 41.

Q Are there reasons why you would prefer to challenge the test under the job-related standard, rather than under the racial bias standard?

A Yes, there is—if I can win a grievance and arbitration on job-relatedness, it applies to everyone in that bargaining unit.

If I would win a case under the cultural bias, I'm not too sure whether it would apply to the entire bargaining unit or not and since I have been successful in every case that we had arbitrated on job-relatedness, I saw no reason to change.

* * * *

[24.131] Q Has your department undertaken any activities outside the collective bargaining process and negotiations to try to restrict the use of these tests?

A Yes, we have. Two that I can remember. One we participated by filing a brief in the Duke Power case. The second item is that we participated in the National Testing Conference held at Hamilton University.

Q Union Exhibit 149, which is there in front of you, is that the brief that was filed for the steel workers?

A Yes, it is.

Q Does your department have anything to do with preparing that brief?

A Yes, I did some of the research work on this and I corroborated with Mr. Michael Goddess and one of our attorneys in the—who filed the brief.

Q And Exhibit 150 in front of you there, could you tell us briefly what that is and what the union was trying to do?

A Yes. This is a letter pertaining to the draft set of proposed guidelines on employing selection procedures. This letter was compiled by our legal office in Washington and this was to make comments on [24.132] a proposed set of guidelines when they were merging with the EEOC and FEA guidelines.

Q What would the union want to be done there?

A I was worried in the combining of the guidelines that there was going to be a loosening up of the validation requirements for testing and that we would have a weakening in the process of approving tests to be used for selection of employees.

Q Did your department have anything to do with the preparation of that statement?

A Yes. We had done some of the research work for this paper policy.

* * * *

[24.170] ERNEST C. WILLS, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q By whom are you employed, Mr. Wills?

A I'm employed by the Department of Labor, Occupational Safety and Health.

Q For how long have you worked for OSHA?

A Since August of last year.

Q Prior to that you worked for Lukens; is that right?

A Yes, I did.

Q For how long did you work for Lukens?

A 31 years, six months.

* * * *

[24.172] Q You were elected a grievance committeeman in 1967; is that right?

A Yes, I was.

Q You served as a committeeman until 1979?

A Yes, I did.

Q You were on the negotiating committee each year during that period except for the 1971 contract?

A That's correct.

Q After the April 1979 election, were you chosen for any other union position?

A I was elected as the grievance committeeman for all of the grievance men.

Q Grievance chairman, you mean?

A Grievance chairman.

* * * *

[24.173] Q During the 12 years that you were on the grievance committee, was it ever the union's official policy not to refuse to file or process grievances alleging racial discrimination?

THE COURT: You said was it their policy not to refuse to file.

BY MR. SILBERMAN:

Q Was it ever the official policy to refuse to file or process grievances alleging race discrimination?

A No, it wasn't.

Q Did you have any—in your experience, what was the effect of alleging race discrimination in a grievance?

A If we would try to argue race discrimination it seemed as though the labor relations department always argued a little harder, because they tried to give the [24.174] opinion that they didn't look at the black people that way. It was better for us to file a grievance under a violation of the contract and try to stick to an article.

Q Did you ever allege race discrimination in any grievances you handled?

A Yes, I have.

Q Take a look at Union 261, if you will. Did you file that grievance?

A Yes, I did.

Q Take a look at the statement of the union's position at the third step meeting. Is that an accurate statement of the union's position?

A Yes, it is.

Q Now, the last page indicates this grievance was withdrawn. Why was that?

A Well, the two people eventually got the job. I went back and I talked to them, and I asked them what they wanted to do with this grievance, and they said, "Well, since we have the job, withdraw the grievance."

* * * *

[24.197] RONALD PATTON, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CLARK:

Q Mr. Patton, you work for Lukens Steel?

A Yes.

Q What is your job?

A I'm a BP operator.

Q In what department?

A Pickling.

THE COURT: What's BP?

THE WITNESS: Blast pickle operator.

BY MS. CLARK:

Q How long have you worked in that department?

A 28 years.

* * * *

[24.198] Q How long have you been active in the union?

A Since about 1965.

Q You have a present position in the union?

A I'm on the grievance committee.

Q Which zone?

A 11.

Q About how many times have you been elected to that position?

A Three.

Q What does your zone include?

A Cladding, finishing and pickling.

* * *

[24.206] Q Are you familiar with the computer scheduling system in two of the [departments] that you serviced?

A Yes.

Q Have you received complaints by employees about the way—

A Yes.

Q Who have you received complaints from?

A From Don Smith and Wilfred Mayfield.

Q What is Mr. Smith's race?

A White.

Q He is the shop steward?

A Yes, he was.

Q What has been done in response to those complaints?

[24.207] A Well, we have had five or six meetings on changing the computer programming to correspond with the contract.

Q Is the union in agreement that some change should be made?

A Yes.

Q Why has no agreement yet been reached?

A Because we can't get the parties together all at the same time, and in the past year or so we had four different chairmen.

Q Are there some details yet to be worked out?

A Yes, there is.

Q What is the union's policy about handling the grievance of black employees?

A Same. They are all the same.

Q You mean the same as white employees?

A Yes.

Q Have you ever failed to follow that policy?

A No.

Q Do you know of any other grievance representatives who failed to follow it?

A No.

Q Does the union have a policy about alleging race discrimination in grievances that you file?

A Come again?

[24.208] Q Is there a union policy or procedure with reference to putting race discrimination in grievances?

A No, all the same.

Q When an employee has a discrimination, has a complaint of discrimination, how do you handle it?

A Well, at one time I would just go ahead and file a grievance, and I sat down with the head of the Civil Rights Committee one time and he told me that, you know, send the person to him so he could talk to him and investigate, then if we couldn't come to no satisfaction we would put it in the grievance procedure.

Q And who was the head of the committee you spoke with?

A Tommy James.

* * * *

[25.3] JAMES JONES, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. CLARK:

* * * *

Q What is your current employment?

A I'm a member of the Pennsylvania Labor Relations Board. I'm a retiree of the United States Steel Workers of America, and I'm also the president of the Negro Trade Leadership Union Council.

Q Could you give us a summary of the positions you've held in the steel workers union before you retired?

A Originally I was a volunteer organizer. From that I became a staff [25.4] representative and later on I became an International representative and following that an assistant to the president of the United Steel Workers.

Q Do you recall when it was that you were appointed assistant to the president?

A At the time the election of president I. W. Abel. I forget the time.

Q The mid-sixties?

A I suppose.

Q Approximately when did you retire from the steel workers?

A 1970.

Q Did you serve on any union committees at the International level?

A I served on the legislative committee, the political education committee and the civil rights committee.

Q What were your responsibilities as a staff representative and later as a representative in the International Union?

A Duties as a staff representative covered—namely, I would organize and negotiate contracts and carry out the policies of the International Union.

Q Within the International Union as an International representative, what were your responsibilities? [25.5] A It was more like troubleshooting in those

days, going around the country finding out what the conditions were and to report back to the International officers and executive board members.

Q Was there one subject more than any other that you focused on in that position?

A Yes. The question of civil rights and equality of opportunity was one of my major functions.

Q Have you held other positions with public bodies or political and civil rights organizations?

A Yes. I was one of the early members of the Philadelphia Fellowship Commission.

I was also the founder of the Council for Equal Job Opportunity, which is a constituent agency of the Fellowship job agency, and I was also a [founding] member of the Chapter for [Americans for] Democratic Action, and I was also the chairman of Labor Committee, NAACP, executive board member of the Urban League and I can go on.

Q What about public commissions, other than the Pennsylvania Labor Relations Board?

A I served as a member of the apprenticeship and training council appointed by the Governor.

I was also appointed by the Governor to the Youth Development Centers of the Eastern part [25.6] of the State of Pennsylvania, appointed by the Governor.

I was also one of the original members of the Philadelphia Human Relation Commission, established under the Philadelphia Charter, appointed by Former Mayor Joe Clark.

Q Did you hold any of these positions while you were employed by the steel workers union?

A I was a member of the steel workers union when I served in all of these capacities.

* * * *

[25.12] Q In your position with the legislative committee of steel workers, did you participate in the union's activities supporting various legislative efforts?

A Yes, I did.

Q What was the union's position on civil rights legislation?

A The union's position was to not only support the organization, but sometimes even get certain congressmen and legislators to introduce pieces of legislation that would guarantee equal opportunity, and that sort of stuff. The union did that, and I helped.

Q Can you recall some of the specific kinds of legislation that you supported?

A The establishment of the first FEPC law in the State of Pennsylvania. Our union was in the forefront of that.

And, as far as the other legislation in the State of Pennsylvania, and also the national government, we were in the forefront of that.

We were also in the forefront of helping to establish the Human Relations Commission in the City of Philadelphia, and I worked on that very hard myself as a member of the steel workers union.

* * * *

[25.58] CARL CANNON, sworn.

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. Cannon, you're employed by Lukens; is that right?

A Yes.

Q Do you have an alias by which your name might be known to the Court?

A Cookie.

THE COURT: Cookie or Cokie?

THE WITNESS: Cookie.

BY MR. SILBERMAN:

Q What job do you hold presently?

A Strand Cast foreman.

Q How long have you been a foreman?

A Since June of 1974.

Q Can you run down the positions you've held in the union before you went to management?

A Well, I was Zone Committeeman, I was treasurer. [25.59] I was Chairman of the Civil Rights Committee and I was on the legislative PAC Committees.

Q Let's see if we can get some dates here.

Am I right you were Assistant Committeeman from '67 to '70?

A Yes.

Q And then committeeman from '70 until you became a foreman in '74?

A Yes.

Q You were treasurer from '69 to '73?

A Yes.

Q Is that right? And you were Chairman of the Civil Rights Committee from '70 to '73?

A Yes.

Q Were you involved in any of the negotiations as part of the union negotiating committee?

A Yes, I was.

Q Which contracts were those?

A 1971 and 1974.

* * * *

[25.65] Q Were you involved in representing Ramon Middleton in his efforts to get into the strand cast facility?

A Yes.

Q Were you his committeeman?

A Yes.

Q How did you first become involved in the Middleton case?

A Well, he came in and told me that he had applied for the position in strand casting and he wasn't accepted, but no one had told him the reason why he wasn't accepted.

So I told him I'd look into it for him, so I got with the company to find out why he wasn't accepted and they told me that it was on the foreman's evaluation.

Q And what did you do when you learned that?

A I came back and told Mr. Middleton about it.

[25.66] Q What else did you do?

A We sat down and we talked about it and we—

Q Who's the "we" here?

A Middleton and I. And we figured the best avenue to take to try to get it resolved—

Q Did you have—before we get into that, did you have any discussions with anybody from the company about Mr.—once you learned why Mr. Middleton was passed over?

A Yes, we had talked—I had talked first with John Muhs and then I had talked—Harry Cavuto and I had talks with John Muhs and John Ryan.

Q What did you, as a union representative, say to Mr. Muhs and Mr. Ryan about the Middleton matter?

A Well, I told him I thought he should reconsider because the foreman could have a biased opinion.

Q Now, was Mr. Middleton's name included in the list of employees to be given preferential consideration?

A Yes, it was.

Q After those negotiations, did you have any further involvement in representing Mr. Middleton in his efforts to get into strand casting?

A Yes. I think it was in March, he came to me again and at that time we figured we would file a [25.67] civil rights complaint with the local union.

Q Why did you decide to go that route, rather than say, file a grievance?

A Because we figured if we filed a grievance, it would take longer because we'd have to put discrimination into it and discrimination issues take a long time to resolve, and we figured that if we file a civil rights complaint, they know it's discrimination from the start and probably it would be handled faster.

Q When you say, we, who's the we?

A Ramon and I.

[25.68] Q He had conversations?

A Yes.

Q And did he agree or disagree?

A He agreed with the proposal I had put before him.

* * * *

[25.70] Q After Mr. Middleton got into the strand casting facility, did you file a grievance to get his seniority corrected?

A No.

Q Why not?

A Because he wanted to go to the outside agency, and he figured that would straighten the things out.

Q Did anybody who came off the preference list [25.71] into the strand cast subdivision have their seniority adjusted?

A No.

Q Take a look at Union Exhibit 486 for a moment, if you will.

What is that document?

A It is a document stating that 180 days after the strand casting operation was put into effect, there wouldn't be any grievance filed as to the job evaluation.

Q To your knowledge, did the union sign any other agreement waiving the right to file grievances to any other matters pertaining to strand casting?

A Not that I know of. I wasn't even aware of this when it happened.

* * * *

[25.81] Q Do you recall in the 1970s, '71 negotiations, the company proposing mergers of various seniority subdivisions?

A Yes.

Q What was the union's response to that proposal?

A The union didn't agree with the mergers.

Q Why not?

A One of the main reasons was because if they merged—the union thought if they merged the seniority units, they would have people from all these seniority units in one and they would be doing each other's work and sooner or later the company would see that they didn't need as many people as they had and they would cut manpower.

Q In the union's judgment, would the company's proposals have increased opportunity for black [25.82] employees or integrated the subdivisions?

A I don't think so, no.

Q Why not?

A Because of some of the mergers that were planned, the plan like—plan in forge and carpenters shop and pipefitters and what have you. They were all in the one seniority unit, one department, and these people in the department would always have first preference to whatever goes on and they would be keeping these departments together, to open hearth pit or the electric furnace pit and the hot top department was another merger and it was predominantly black.

Q Both these subdivisions were?

A Yes.

Q Did the black employees, to your knowledge—did the black employees have the same views toward these proposals or different views as white employees?

A I think all people have the same views because people don't like changes and that would have been a big change.

* * * *

[25.84] Q So far as you were able to observe, was it the practice of any of the Grievance Committee to discriminate against black employees in representing them in their grievances?

A I would say in my presence they didn't.

Q That was the union's policy when you were president of third step and many fourth step meetings while you were committeeman?

A Yes.

Q And Grievance Committee meetings?

A Yes.

Q What was the—while you were active in the union, what was the union's policy if the union thought or suspected the company had discriminated against a black employee?

A Well, they would confront the company about it, and then they'd find out all the pertinent facts and then they'd get back to the individual who made the complaint and if necessary, they would file a discriminatory grievance if they found out the company was in the wrong.

* * * *

[28.85] [CROSS-EXAMINATION]

Q Mr. Cannon, I've shown you a document that's marked Union Exhibit 432. Do you recognize that?

A 432?

Q Yes. 1965 letter appointing a Civil Rights Committee of Local 1165.

A Yes, I do.

Q You served on that committee, did you?

A Yes.

* * * *

[25.86] Q Looking at the document, P-1400, I've shown you, do you recall that at all?

A Yes, I do. This is a committee [formed] in the open hearth—these are sort of the problems we had with supervision and working conditions.

Q And was that the group that took John Muhs up and showed him the Berlin Wall on the west side of the locker rooms?

A Yes.

Q Besides doing that, were you able to accomplish anything with that committee?

A Well, we got some of the problems straightened out in open hearth pit.

Q How did you do that?

A Because we went to supervision and we talked to them about it and they talked in turn to the foreman.

Q Did the union have anything to do with that?

A No, they didn't, just the names on the document I gave them.

Q Now, looking at—I show you a document that was marked yesterday in connection with Mr. James' testimony, Exhibit—Union Exhibit 248, and I'm going [25.87] to ask you to look at the minutes—they're minutes of the Civil Rights Committee, and I'm going to ask you to look first at the minutes of October 30, 1970.

Now, looking at these Civil Rights Committee minutes for October 30, 1970, you were chairman of the union, chairman of the joint company-union Civil Rights Committee then?

A Yes.

Q At the bottom of page 2, it has a question four. Would it be possible for this committee to get a breakdown of hiring by departments in bargaining and salaried units?

The next page, it says, Mr. Domangue provided a listing of bargaining unit employees by number in each subdivision by a breakdown of black and white employees.

I'm going to show you another document and ask if that is the—if that is the breakdown you received. That is Exhibit P-1216.

Do you recall whether that's the breakdown that you received?

A Yes, that's the breakdown.

Q Do you recall—did you pass copies of that on or did the president of the local union get a copy [25.88] of that?

A The president of the local got a copy and in fact he gave me mine.

Q Are you aware of any actions that the Civil Rights Committee took on the basis of that information?

A No, I'm not.

Q Are you aware of any other action that the local union took on the basis of that information?

A No, I'm not.

Q Were there any instances in which that Civil Rights Committee found that racial discrimination had existed?

MR. SILBERMAN: Which Civil Rights Committee?

BY MR. EWING:

Q The company-union Civil Rights Committee, whose minutes you have there in U-248.

Do you recall whether—without looking all through the minutes, from your recollection, do you recall whether there were any instances?

A I'm not aware of any instances where the company admitted that there was—really that there was any. All the complaints we had, we talked about them, but I'm not sure whether we really settled any [25.89] of them.

Q Do you recall whether that committee, while you were chairman of it, was able to accomplish anything in furthering its purposes?

A Yes. We accomplished one thing, that the people had complaints that there was discrimination and that the company was looking at it and that the union was looking at it.

* * * *

[25.91] [REDIRECT EXAMINATION]

Q Mr. Cannon, do you have—looking at Plaintiffs' 1400, do you have that in front of you?

Do you happen to recall if any members [25.92] of the committee were shop stewards at the time?

A Yes. I think all of them were shop stewards, except Alphonso Jones.

* * * *

[25.96] EARL J. ZITARELLI, having been duly sworn, was examined and testified as follows:

* * * *

[25.99] [DIRECT EXAMINATION]

Q Were you in the courtroom when I read from the testimony for Mr. Middleton?

A Yes.

Q Are you known as Horsey?

A Yes.

Q The incident that Mr. Middleton was—can you comment on that testimony?

THE COURT: Just ask him what happened. No witness can comment on some other witness' testimony unless he is an expert.

THE WITNESS: Well, from what—

THE COURT: Wait for another question.

BY MR. SILBERMAN:

Q Did you ever make the remark that Mr. Middleton attributes to you?

A No, I did not.

Q Are you sure of that?

A I am positive. I am not known to make remarks such as those.

Q Have you ever made a remark such as that?

[25.100] A Never.

* * * *

[25.108] RICHARD JACKS, sworn.

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q You are employed by Lukens, is that right?

A Right.

Q You previously testified on behalf of the plaintiffs in this case?

A Yes, I did.

Q You were elected assistant committeeman in 1970, is that right?

A Yes.

Q You served until 1973?

A Yes.

Q Then you were elected a committeeman in 1976?

A Yes, sir.

Q And served until 1979?

[25.109] A That's right.

Q You are presently a trustee?

A Yes, I am.

Q Have you been on the union executive boards at any time?

A 1970 to '73, then from '76 to today.

Q Have you ever been on the union's negotiating committee?

A Yes, I have.

Q When was that?

A 1977.

* * * *

[25.112] Q Let me ask you to take a look at Union Exhibit 91, if you will.

Did you file that grievance?

A Yes, I did.

Q Why didn't you allege racial discrimination in this grievance?

A There's no way I could prove it.

Q Did you have any conversations with Mr. Mayo, whether to allege discrimination or not?

A Yes, I did.

[25.113] Q What were those conversations?

A Well, because at the time he just walked out of the door of the gassing unit, number one—the air conditioning was broken down and the gassing unit was broken down and he was soaking wet with sweat. He walked out to get a little air and he was holding a thermo—it is a long instrument used to take the temperature

and he was just standing there swinging it as if it was a golf club or something.

At the time, Dale Livingston, the safety area man came by and saw him standing there without a hat, and proceeded to call I think it was, the superintendent, and told him he was not wearing his safety equipment and to write him up.

Q Did you discuss the wording of this grievance with Mr. Mayo before you filed it?

A I'm not sure.

Q Take a look at the last page of the exhibit.

Can you explain that this it?

A This is a portion of the second step section that we made after the negotiations of 1977.

Q After the 1977 negotiations, you brought a large number of grievances back to the second step to try and resolve it?

A That's right.

[25.114] Q And this is the list of some of them in your zone?

A Yes, it is.

Q Now, this indicates that this grievance was withdrawn.

Who decided for the union the disposition of the grievance?

A I did.

Q And why was it withdrawn?

A As far as I know, we had agreed to withdraw from his record.

Q Withdraw?

A The written warning.

Q From his record?

A Yes.

* * * *

[25.116] Q Since you've been active in the union, what has been the union's policy with respect to handling of grievances of black employees?

A We handle all grievances the same.

Q What's been the union's policy if it believed or suspected if the company has discriminated against a black employee because of his race?

A Well, I guess someone would file a grievance with International.

* * * *

[25.117] ELKIN KISTNER, having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q By whom are you employed, Mr. Kistner?

A Bredhoff, Gottesman, Cohen & Weinberg.

Q What position do you have with the law firm?

A Legal assistant

* * * *

[25.122] Q Now, take a look at Union Exhibit No. 321. Did you prepare that list?

A Yes, I did.

Q Union 321—

A I am sorry, sir. No, I didn't prepare this list. This was prepared by Benjamin Pilotti, the president of the local.

Q What did you do with respect to this list?

A I verified the racial designations alongside each of the names.

Q How did you do that?

A By going to the computer generated list.

Q Did you find Mr. Pilotti made any mistakes?

A Yes, I did. And for those I circled the names and had written the proper racial designation in the margin.

Q Were there any instances in which you found more than one employee with the same name and different races on this list?

A Yes.

Q How did you deal with that?

A The local union hall has a list of the shop stewards, and on that list they will have the clock number,

the check number of the individuals. By getting the check number you can then go to the [25.123] computer generated list and determine which individual is the shop steward.

Q Have you calculated the number of individuals whose names appear on this list and the percentage of them that are black?

A Yes. I had the list over on the bench. It is on a file card.

(Mr. Silberman handing a card to the witness.)

Q What do your computations show?

A They show that there were 425 on this list who were shop stewards.

Q What percentage are black?

A 23.5.

THE COURT: What was that again, the percentage?

THE WITNESS: 23.5 percent, sir.

THE COURT: Thank you.

Q Take a look at Union Exhibit No. 322. Did you prepare that list?

A No. That is a Local Union 1165 business record.

Q What did you do with this list?

A I wrote B or W for black or white, in the margin next to each name.

Q Did you get that information in the same way [25.124] as to the previous exhibit?

A Yes, I did.

Q Have you calculated the number of individuals listed on this list, and the percentage that are black?

A Yes.

Q What are those figures?

A The total number is 152, and the percentage of black shop stewards is 27.0 percent.

* * * *

[26.3] BEN FISCHER, sworn.

DIRECT EXAMINATION

BY MS. CLARK:

Q Mr. Fischer, how are you presently employed?

A I am a Consultant and occasionally Lecturer.

Q What is your present address?

A 154 North Belfield Avenue, Pittsburgh, Pennsylvania.

Q If you want to sit back you could pull the microphone closer to you and you would be more comfortable.

THE COURT: Or he could leave it a little farther away if he wants to.

BY MS. CLARK:

Q Could you outline the experience you had with the United Steelworkers of America and its predecessor organization?

A I was the Director of Research of the Aluminum Workers of America, ACIO Union, starting in 19—excuse me, 1941. 1944, when the Aluminum Workers became part of the Steelworkers I was Associate Director of Research of the United Steelworkers of America and employed by the Steelworkers Union until [26.4] December 1, 1978, when I retired.

Q Have you held other positions outside the Steelworkers that are related to the subject matter in this lawsuit?

A I have served, now serve as a Director of the American Arbitration Association. I was the Housing Director of the CIO. I was—I am a member and have been since its inception of the Advisory Committee of the Office of Arbitration Services of the Federal Mediation and Conciliation Service. I hold a number of positions and have for many years of a community nature in the Pittsburgh area. I am currently the Chairman of the Pennsylvania Employment and Training Council, which is a gubernatorial appointment.

Q Have you just completed an appointment in the academic world?

A Oh, yes. I am supposed to this week complete my stint as a Regent Lecturer at the University of California, Berkley, but I was excused for the purpose of coming here and several days I just returned.

Q While you were employed by the United Steelworkers, would you describe the responsibility you had for negotiations on seniority issues?

A Well, anyone who negotiates with major industries and companies is responsible for seniority issues and I have done that since the beginning of my association with the Aluminum Workers and the Steelworkers.

[26.5] I was associated with both the U. S. Steel negotiations and the Bethlehem negotiations since the '40's and in 1954 I was the chief technician or staff person in the U. S. Steel negotiations. And that was the first time an effort was made to inject seniority into the so-called company negotiations and the United Steel Corporation. Prior to that time any seniority discussions of any consequence were carried on by local union with their local management.

Subsequently in 1959 and 1960, in the first formal industry-wide negotiations that took place between the Steelworkers Union and the steel industry as an industry, I was one of the four members of the committee that was carrying on the non-economic negotiations, the major item being seniority and the related questions during the whole period of pre-strike negotiations during the strike and during the period of the Taft-Hartley injunction until January 4, 1960 when the agreement was finally made.

Those negotiations led to the development and creation of the Human Relations Committee involving the major steel companies and the United Steelworkers of America. And I was appointed Chairman of two of the subcommittees or task forces of that program, that dealing with seniority and that dealing with grievance and arbitration questions.

From then on we were in full-blown negotiations almost on a year-round basis for at least six [26.6] years on seniority.

Q And were you part of those negotiations?

A I was the person for the union who was responsible for all of those negotiations.

* * * *

[26.7] Q Can you explain how those negotiations relate to the Gotham group companies?

A My understanding is that the Gotham group, which was organized in the '50's as a result of the companies, most of [26.8] the companies, the major companies, basic steel producers but not in the Coordinating Committee, gathering together in New York at the Gotham Hotel for the purpose of trying to get some involvement in negotiations which would have very great impact on their negotiations even though they were not a part of the Coordinating Committee.

And they apparently came to a conclusion and transmitted it to the industry, that is the Coordinating Committees, and they made an arrangement whereby they would have some kind of participation toward a selective representative of the so-called Gotham group who attend or some of the meetings and have some kind of limited participation. My understanding is the rationale for that was since they were going to be pretty well affected, to put it mildly, by the results of what the Coordinating Committees negotiated, they wanted to have some intimate knowledge throughout of the process that was going on and make some contribution at the industrial level.

Q How is it that the union carries the settlement at the industrial level to companies such as the Gotham group companies?

A Well, in this era of industry bargaining it takes different forms at different times but in this era of industry bargaining the union has tended to record the results of the industry negotiations in a manual or blue

book [26.9] or variously captioned books in connection with each of the negotiations. This is sent to the members of the Board of Directors and of the union and it is sent—excuse me, the Executive Board of the Union—and it is sent to all of the staff representatives of the union throughout the country. They in turn use these documents as their guide for attempting to put into effect or reply to the extent practical the results of the industry negotiations, the negotiations for each of these companies.

My understanding, the industry has a somewhat similar service for its own constituents.

* * * *

[26.11] Q Now, I would like to turn to the general questions of the origin and characteristics of seniority in the basic steel industry. How does seniority apart from any contract non-discrimination clause address problems of employer discrimination?

A The purpose of the seniority is to avoid discrimination. Absent seniority employers through their supervisory organization are required to make decisions as to who works, what work [26.12] they perform, who works overtime, who gets promotions, who is demoted, who is laid off, who is recalled. Absent seniority there would be nothing which would restrict employers except in more recent years certain laws from deciding on a judgmental basis or any basis for that matter who will be affected and by what manner in any and all of these decisions.

Seniority is the response of modern unionism to overcome this infinite potential of all kinds of discrimination based on friendship, relationship, religion, sex, race, ethnic background and so forth. In large industries and certainly in an industry as large and diverse as the steel industry there are all kinds of characteristics of the native just referred to.

The purpose of seniority is to induce the potential for these kinds of judgments being made on non-legitimate grounds, grounds not having to do with doing with operation of necessity, not having to do with extraneous matters, efficiencies.

What you now have is a system of seniority determining who gets preference and who is subject to what kind of assignments, what kind of layoffs, and who gets promotions and who gets transfers and whatever else is in the system of directing employees.

In the basic steel industry, the general pattern of this seniority arrangement is that some measure of [26.13] length of service determines this competition or choices among employees subject to the profitable and legitimate interests of management in making choices outside and contradiction to seniority based on needs of the company for efficiencies and matters that peculiarly are within management's purview.

* * * *

Q If management has chosen an employee on grounds that [26.14] appear to include race, would it be necessary in the grievance procedure to establish that race was the reason in order to win the grievance?

A No, whatever the ground of discrimination are the rules in the steel industry at least are to apply contractual terms and discrimination for whatever reason is not permissible under the contract and never has been.

* * * *

[26.24] Q Mr. Fischer, as of 1959, were you as the key negotiator on seniority aware of racial patterns in initial assignments in various places in the steel industry?

A Yes. The assumed culture of the industry was based on what union people at least took for granted to be a tendency on the part of management to assign blacks to certain operations. These were not necessarily uniform plan by plan. By and large these assignments

would go in a direction of the coke plant or lesser extent blast furnace to the railroad track labor and particular plants with other departments but there you would not get a pattern necessarily but more or less a tradition germane to that plant.

Q What measures, if any, did you as a union negotiator take to address this problem?

A It was always my desire to overcome this problem by [26.25] giving employees at an early point in their career options to transfer out of wherever it was they had initially been assigned to. We succeeded during the '60's in establishing rights of employees with six months of service by which time an employee gets to know enough about a plant so he can know what he might be interested in in the way of long range career to establish rights for those employees and those with more than six months to transfer using service for that purpose, always plant service used for transfer purposes.

And it would also establish the fact that an employee who had a year service, he could transfer anywhere in the plant.

Q What relation did your goal of attaining these transfer rights have to the problem of racial discriminatory initial assignments?

A To the extent that employers had in the past or persisted in assigning employees initially on the basis of a racial consideration, the employee who had been assigned would have the right to overcome that assignment by exercising transfer rights in choosing a career germane to his own preference.

Q Why was it that you took this approach which might be termed as an indirect approach to initial assignment discrimination?

A In industrial unions in America the tradition has always been, some attorneys think it is the law, that employers [26.26] have the right to hire without reference to the collective bargaining process or any rights of the union to intervene. And the right to hire includes the

right to determine where the new employee goes in the plant.

Of course, it is a legal matter that the union does not fully represent the employee until 30 days after his employment.

Q Well, what has management's position been on the subject of expanding transfer rights based on seniority?

A Management has always been opposed to it. It introduces an element of uncertainty in their own plant which the employee who becomes a major actor in the process of planning the careers of employees rather than the employer making that decision. Whatever decision in management that was made the employee can in effect overrule that decision by obtaining a transfer.

Q Are there any cost consequences to management?

A There are cost consequences because whatever training the employee received in the period prior to his transfer is gone down the drain and the employee must start with another individual and train that individual.

There is a second area which can turn out to be a major cost. Once you put the transfer system in place and the employees use it frequently and some employees tend to do so for many reasons of a personal or extraneous or even of [26.27] a frivolous nature. And that can become an inconvenience to management and a significant cost problem.

I have been involved in many discussions with management where they complain to me exactly about these kinds of problems.

Q When did the union first make proposals for broad transfer rights at the industrial level?

A Well, I am certain that some proposals were made in 1959. I do not offhand recall. I seem to think they were made in the '50's.

Q When was it that management first began to move toward granting these proposals?

A In 1962 when the Human Relations Committee reported. And might I say the joint report of the Human

Relations Committee on seniority was substantially two reports, one by the union members and one by the management members. It came up to the negotiators and then proposed these rather different approaches.

Q What were the events that made management willing to move in this direction?

A Well, beginning in about 1954, for the first time during the union's existence in the steel industry we began to have layoffs of a significant long length and you began to have two groups wide-spread in the steel communities of young people having worked in plants and older people sitting at [26.28] home even to the point of having a father out of work and the son working because of the operations of narrow seniority. This became so unfair and so embarrassing both to the union and to the management that they began to address this problem.

But it was not an easy problem to resolve. It was not until the '60's that all the pieces were put together to get on the road to its resolution.

Q What was the first year in which any substantial progress was made?

A 1962.

Q And what was it that you did to address these concerns in 1962?

A Well, the parties had to zero in on the major question which was the types of layoffs. Therefore they set up seniority pools and for the first time plant service would be used amongst the employees on the identified pool jobs in determining which one would be laid off and subsequently which order they would be recalled. And this was a substantial change, I might even say a revolution in the steel industry.

Almost as the inevitable [corollary] of this transfer rights began to appear within the structure of these pool arrangements in 1962 and it wasn't until 1968 that process matured.

* * * *

[26.33B] Q Under the contract as it stood before you had a non-discrimination clause, how did the contract provisions relating to discipline apply in a situation where there seemed to be unequal treatment?

A Well, one of the primary means by which a union advocate in an arbitration proceeding would challenge discipline other than challenging the facts as to whether the employee actually did it, was accused of doing, was to show that the company was exercising disparate treatment for employees of similar kind of alleged offenses.

So, inherent in the whole processing of challenges of disciplinary action would be challenges the company had treated people with disparity, which, of course, means discrimination. It became pretty much the obligation of management to prove that any such discrimination was justified.

I would use as an example the fact that they might treat an employee with 20 years service and an employee with six months service for a similar kind of offense. It would have to be something of that nature, not the person's race or his color, or ethnic background, or his union activity or anything of that sort, clearly those were not acceptable criteria between people.

Q Was a non-discrimination clause necessary in order to address problems of wage discrimination?

A No. Because that had been addressed [by] the union in [26.34] 1944 with the establishment of the so-called C.W.S., which is the wage determination system effective throughout the steel industry. That had removed from the question supervisor judgment. [The determination] of a proper wage of an employee and just became a matter of applying this jointly negotiated manual, which is used throughout the steel industry not only by the coordinating companies but I think other companies that make steel.

* * * *

[26.35] Q Let me direct your attention to Union Exhibit 158 which I will bring to you now. The final page of that exhibit, does that accurately reflect—

MR. BORISH: Excuse me. Could we have a copy of that, please? We don't have a copy.

(Pause.)

BY MS. CLARK:

Q Does the proposal on the final page of that exhibit reflect the actual proposal made to the industry by the union?

A It is the proposal.

Q Did the industry agree to the full scope of that proposal?

A No.

Q What was the extent of the industry's willingness to agree?

A They did not then, to the best of my knowledge never have agreed to any contractual clause dealing with the hiring of employees.

Q What reasons did they offer for that refusal?

A This industry and most industries consider the question of who to hire is an exclusive matter for management. It is not an appropriate subject for collective bargaining.

[26.36] Q How does that relate to initial assignments?

A When you hire somebody you don't just allow them into the general vicinity of the plant. You have to hire them into some job.

So inherent in the process of the right to hire is the right to initially assign the employee. And that in fact is what takes place in the steel industry. And this is why the union in order to overcome this continued bar

of getting involved in the hiring and initial assignment area has resorted and still resorts to the best of my knowledge to a transfer system so that employees who are hired into jobs and departments not to their liking will have an opportunity promptly to transfer out.

* * * *

Q Mr. Fischer, I show you an exhibit that is in evidence as Union 623 and directing your attention that has at the top of it the language or the words Article 19, Non-Discrimination. Can you tell me whether that is the language of the clause that was agreed to at the industry level in 1962?

A To the best of my knowledge, it is.

Q What was, if you could briefly describe, the subsequent negotiations on the scope of the non-discrimination clause at the industry level?

[26.37] A Well, the parties continued to lock horns over the question of whether non-discrimination considerations should apply to a matter of hiring and initial assignment. The [respective] positions of the parties remains the same.

The union somewhere along the line, I think it was probably in '68 or '71, did secure one improvement or one change. Formally the probationary period would vary slightly and the language governing that varies from contract to contract and company by company but basically a probationary period is a period which the employer has virtually unrestricted rights to do as they want about an employee. So that if they feel they made some error in hiring that employee they don't have to go to the hazards of the grievance procedure to transfer that employee or let him go. Once that employee has completed the probationary period then all the contractual period are there to protect that employee's status.

In some negotiations, I think it was either '68 or '71, the industry did agree that relatively unrestricted right that management had during the probationary period

would be qualified so that those rights could not be used to discriminate against employees on account of race, color, religious creed or national origin. To the best of my knowledge, that is in effect in the major steel contracts now.

* * * *

[26.40] Q Mr. Fischer, I call your attention to Exhibit No. 241, Page 2 and a paragraph that is numbered 4.

A Yes.

Q Can you comment on that paragraph?

A Yes. I think it is an accurate and a revealing statement of the attitude of the official family of the union at that time.

Q The particular reference to the non-discrimination clause there, can you comment on that in light of your testimony that seniority doesn't require non-discrimination clause?

A Well, you will note that the first sentence says negotiation of an [anti] discrimination clause in the April, 1962 agreement which in combination with other provisions contained in the seniority section of that contract—it is that combination that is, of course, significant because I personally would not believe that the anti-discrimination clause would be a very effective clause if it were not for the seniority provision because the seniority provision establishes the real substance of the right of the employees.

Q Would the transfer rights be sufficient to accomplish that purpose without a non-discrimination clause?

A They are sufficient to the best of my knowledge. That is the only thing that actually is applied and when applied to the anti-discrimination you apply it. When you violate a person's seniority [for any] reason you violate it.

[26.42] Q What negotiations occurred on the subject of testing?

A Well, there were repeated negotiations on testing because there was during the period when the EEOC was advocating to management that they should employ testing. But with a very active opposition at least to the Steelworkers' Union to the best of my knowledge the EEOC still takes that position for reasons I don't think are germane. To the best of my knowledge many unions, certainly the Steelworkers' Union, oppose this position.

Q What are the union's primary concerns about testing in the industrial sense?

A Testing is a term that is used in the industrial [26.43] setting really means exposing employees to written tests that do not measure in fact whether the employee can perform the job or not but it is a fairly remote, indirect and unproved and unprovable psychological methodology to determine whether an employee is qualified to do a job.

I personally do not believe any of these testing procedures measuring any legitimate goal.

Let me give you an outstanding example which is an employee who is seeking a job which in no sense requires that he know how to read or write as being asked to pass a test which requires, in order to take the test he must know how to read or write. Obviously that and that alone disqualifies that in my way of thinking which is job related. EEOC doesn't agree with that position.

Q What testing practices does the union have with management in the union's goal of broad transfer rights?

A To the extent management would test people who were seeking transfers, they could overcome through the testing method the seniority rights that the employee was exercising to obtain a transfer.

Q Was there any relation to your concerns about initial assignment practices that had opted against black employees in the industry?

A Of course, studies the union had undertaken. Past years indicated that many parts of the country on the

average [26.44] black employees had been subjected in the general culture of their communities to disadvantageous education, exposure and practices and any tests therefore which really tested one's educational achievements or the consequences of those achievements would necessarily therefore have to be disadvantageous. On the average blacks against whites in the cultural or educational system produce that kind of disadvantageous relationship. I am not sure whether it still applies.

Q What did the union do to prevent it?

A First, abolition of tests and then got the industry to join with it in a very extensive survey of testing within the industry and then a whole series of very intensive negotiations to try to remedy some of what the union considered to be abuses in the way of tests.

Q What was the outcome of that?

A The first time in the collective bargaining agreement criteria of the testing had been included in a collective bargaining agreement and subsequent improvements in the so-called testing clause in the steel agreements.

Q What was the year that you obtained a testing clause in the steel agreement?

A Probably '68. I wouldn't swear to it.

Q What were the key provisions of the testing language?

A That testing had to be in all instances job related, that is to say related to only the determination of whether [26.45] the employee could perform the job involved. There was only one exception and that is in certain instances carefully proscribed the company could also try to determine whether that employee seeking a job could perform the next higher job on the theory that part of the function of an employee's certain situation was to fill in for vacations and sickness, et cetra. Therefore they needed a reasonable number of employees on the job who could perform this job of filling in in the next higher function. Even that was very carefully proscribed.

Q Was there language included in the written test?

A A specific clause saying you could not use written tests in the event an employee seeking a job which did not require an ability to write or an ability to read.

* * * *

[26.46] Q What, if anything, did the union do in negotiations on the subject of access to apprenticeships?

A Well, first we again, after conducting joint studies of the industry developed contract language which made clear something which I personally thought was clear in the first instance but which was not taken very seriously. In practice by either side, namely that the employees had a seniority right to an apprentice job. One of the reasons that hadn't been taken very seriously is because employers had made arrangements with the United States Government and various states permitting to set up various employee criteria and age limitations which effectively defeated the seniority agreement. The union sought to have the Government to get that changed and the steel industry. Our second job was to make it clear these vacancies would be filled through the normal seniority process and there was language which had to do with the testing procedure to try to bring this under the general philosophy of testing that the agreement reflected in other areas, the difference being that in the case of an apprentice you are not testing a person for a job he is going to perform but rather for an assignment which is going to expose them to an extensive period of training and education.

So what you are trying to determine is whether that employee can absorb that training and education. [26.47] That is a much more difficult and complicated matter than testing for a job that the employee has in fact performed.

Q You earlier mentioned in your testimony that the craft jobs were predominantly white. Did that fact play any part in the union's negotiations on the subject of apprenticeship?

A That was one of the major problems that the union had and certainly that I had in trying to get language and provisions into our agreements which enabled interested blacks to enter the apprenticeship program.

The major move that the union had made, was to make the Millwright job and Motor Man Inspector a craft job. That meant a significant number of blacks who were Millwrights and a few Motor Man Inspectors became craftsmen. The way it was done, the Millwright and Motor Inspector Helper, which there were a large number of blacks, had quick access to the Millwright craft jobs and that is in fact what occurred.

* * * *

[26.62] Q I show you a copy of the United States Steel Corporation's agreement with the Steelworkers for 1974 and ask if this reminds you or helps you answer the question in what year the probationary language was changed to prohibit race discrimination?

A Well, this conclusively says that it was done August 1, 1974. Well, it was in the '74 agreement. It was actually done in April of '74.

* * * *

[26.65] Q One final question, Mr. Fischer. You testified at length about the inherent effect of seniority in preventing discrimination. Was that any part of the union's reason in wanting to get seniority where it does not exist?

A Well, certainly. To give you the ideal example for the reasons that are very difficult to identify. Seniority played a minor role over the years in filling apprenticeship opportunities and it is no coincidence that this is the area in which blacks have the greatest difficulty in gaining access. There is no better way to prevent discrimination than with a meaningful seniority system that gives employees maximum opportunity and options.

* * * *

[27.3] BERNARD STAUB, sworn.

DIRECT EXAMINATION

BY MR. SILBERMAN:

Q Mr. Staub, you are employed as a staff representative of the Steelworkers; is that correct?

A That is correct.

Q For how long have you been so employed?

A I have been employed by the International Union for 23 years.

Q During what period of time did you service Lukens Steel Company?

A In the mid 1960's.

Q And when did you leave, do you recall?

A Pardon?

Q When did you leave?

A Around 1968, I think it was.

* * * *

[27.5] Q What was your personal opinion as staff representative of testing, in use of written tests at that time?

A Well, in general not only at Lukens but in any place that testing was involved, I was opposed to it and particularly at Lukens because they had in the agreement the company could take the position they could test the relative ability of the employees. We were very strongly opposed to the testing. I was particularly strongly opposed to it because of my lack—I only went to eighth grade myself. I didn't have that much education. I thought that people should be given an opportunity to try the job rather than be tested on the basis of skills.

* * * *

[27.6] [CROSS-EXAMINATION]

Q It was your impression, wasn't it, that Lukens made more use of the relative ability clause than other steel companies?

A Well, I would say that because of the size that we had quite a few grievances concerning relative ability, yes.

Q Did you recall forming an opinion that they made more use of it than other steel companies.

MR. KLUGHEIT: Your Honor, I object to the admissibility of his testimony as against defendant Lukens. I don't think his opinion of what Lukens did is relevant at least against my client.

THE COURT: I think it might be. Objection overruled.

Go ahead. Answer it.

THE WITNESS: I don't think that they did anything different than the rest of the steel industry except that they used these tests. I didn't have anything to do with U. S. Steel at the time and I know that was one of the big problems in those negotiations, testing in general throughout the industry.

So that I don't know whether they used any more or any less. We were opposed to it.

[27.7] BY MR. EWING:

Q Do you recall at your deposition, Page 37 starting at Line 23, my asking you this question: "Was there any discussion in connection with the collective bargaining negotiations or anything else at Lukens regarding their testing policies?" And your answer: "Lukens was, you know, they had relative ability in their agreement and most of the basic steel companies do and Lukens probably used it more than any of the others."

A They probably did. They probably took more advantage of the testing than some of the other plants.

* * * *

[27.8] Q Let me ask you about do you recall saying this in your deposition on Page 36 starting at Line 18: "And I am going to be honest with you. There was a

lot of blacks in disagreeable jobs. There is no question about it and I think that is true in any steel mill."

And I asked: "Were there heavier proportions of blacks in disagreeable jobs in the mill as a whole?" You said: "I think that is probably true."

A I did say I think that is probably true.

Q You still think that?

A Well, I would be guessing. I still think it was [27.9] probably true because I think they were probably hired into the disagreeable jobs.

* * * *

[28.32] GEORGE IVAN BARRAGE, SR., sworn

DIRECT EXAMINATION

* * * *

Q Where are you employed?

A Lukens Steel Company.

Q What seniority subdivision do you work in?

A 120 Floor Subdivision.

Q And how long have you been in that unit?

A Since 1961.

* * * *

Q How long have you been active in the union?

A Since 1966, '67, somewhere around that area.

Q What is your current position in the union?

A Chairman of the Trustees and Committeeman.

Q Which zone?

A Zone 5.

* * * *

[28.33] Q About how many times have you been elected to the office of Grievance Committeeman?

A About three or four.

Q And when were you first elected?

A In '66 or '67, somewhere around there.

* * * *

[28.34] Q Is Kenny Young in your zone?

A Yes, he is.

Q Has he come to you with complaints on the subject of overtime?

[28.35] A Yes, he has.

Q What was his complaint?

A About giving overtime to a white Crane Runner.

Q What did you do when you received that complaint?

A I checked out what Kenny said with the Foreman. I checked the Crane Department first and they said they didn't know nothing about it, that they didn't give the guy, Earl Riggins, the overtime, that some other Foreman issued it to him.

Q Did you check further?

A Yes, I did. And the teller notified James Reese he wasn't supposed to give out overtime in that area.

Q Did that result in any change in the practice as far as you know?

A The first time it led to—we talked about it, me and Kenny. Kenny came to an agreement they would equalize the overtime between Riggins and Kenny Young.

Then it happened maybe three months to maybe a year from there, I can't remember exactly, it started all over again. This is when I filed the grievance for Kenny, discrimination.

Q The first exhibit in your folder is L-509. The grievance—it is at the third page from the back of that exhibit.

THE COURT: I will bet it is.

[28.36] BY MS. CLARK:

Q Mr. Barrage, the grievance was framed only for the week of July 9, 1978. Do you know why it is it was drawn only on one week?

A Because that is the week that it was happening.

Q Why don't you back up from the microphone.

THE COURT: Just do not lean forward.

MS. CLARK: Fine.

BY MS. CLARK:

Q After this grievance was filed, what happened?

A I checked out with the Crane Department for Kenny whether they were doing this and I found out by checking that Kenny was getting his proper amount of overtime but Kenny was getting it all over the mill.

Q On different cranes?

A On different cranes.

Q And was Mr. Riggins being treated differently?

A I felt that Earl Riggins was getting his overtime in that crane on the preferred job.

Q What was the result of the grievance?

A It was withdrawn by the union, something about Kenny was supposed—in other words, I told Kenny to file a civil rights complaint on it. Because I felt he was being discriminated against.

Q And do you know whether he filed such a complaint?

[28.37] A Yes, I do.

Q Since that complaint has been filed, do you know whether it has been resolved?

A Yes, it has.

Q Has Mr. Young complained to you since then of any problem relating to the distribution of overtime?

A No, he hasn't, not on this subject.

Q Just to keep the record clear, who is Mr. Reese that you referred to?

A Mr. Reese is not a Crane Foreman, he is a Loading [Bank] Foreman where Earl Riggins and Kenny Young work. He was not supposed to be passing out the overtime.

Q And is it the case that Mr. Riggins and Mr. Young worked on the same crane but on different shifts?

A Yes, it was.

* * * *

[28.59] Q Has anybody ever tried to discourage you from alleging race discrimination from a grievance?

A No.

Q What is the current practice when you have a grievance, a complaint that comes to you and it alleges race discrimination? If a man comes to you and says, "I think I am being discriminated against."

A I check it out. If I tell him that there is nothing there, he says, "I want to file a grievance," I definitely still will file a grievance for him whether there is or isn't. I feel he has a right, he pays his union dues to be heard whether it is right or wrong.

* * * *

[28.62] BENJAMIN PILOTTI, previously sworn.

THE COURT: You are still under oath, Mr. Pilotti. Proceed.

DIRECT EXAMINATION

* * * *

[28.69] Q Now, we have had testimony about the negotiation of the contract language on testing. Since that language was placed in the contract, what has the union done in response to employee complaints about testing?

A Where we get a complaint we feel worth relating, we would file or process a grievance.

Q Are there any grievances pending on the subject of tests now?

A There is a grievance pending where Machinists failed to test going from "B" Machinist to "A" Machinist. And we have grievances pending where people were denied entering the apprentice program.

Q What test was involved there?

A A math test.

Q Is that the one they call the Shop math test?

A Yes, in the apprentice program.

Q Which grievances are the ones that the International Union is currently consulted on?

A The apprentice, the math test.

* * * *

[28.79] Q Union 264, is that another of the grievances you mentioned when you testified previously?

A Yes. I helped to word this grievance on behalf of Virginia Washington and it was turned over to Thomas James. He was the Grievance Man in that area.

Q As far as you know, are the minutes that record what happened in the grievance proceeding accurate?

A Yes, I would say so.

* * * *

[28.83] Q Does [Monroe] Jones work in your zone?

A Yes.

Q Was there an occasion when he came to you with a complaint that a Foreman was tutoring some white employees who were taking the same test he was taking?

A Yes, that is the complaint he made to me.

Q What did you do?

[28.84] A I arranged a meeting with his immediate supervisor and made the charge that they were favoring other employees on testing.

Q Who was present at that meeting?

A Monroe Jones, Donald Kleintop and myself.

Q Was anything done as a result of that meeting?

A The Supervisor Kleintop made an investigation and made the proper corrections because Monroe Jones became an "A" Painter right after that.

Q Did you understand he took the upgrading test and passed it?

A Yes.

Q Did you tell Mr. Jones that he couldn't file a grievance about this incident?

A No.

Q Was there anything left for him to file a grievance about?

A No. He got the rate.

Q Did he come to you at any time after that to ask you to handle some other complaint?

A Yes. Monroe Jones came to me one time and he alleged that it wasn't fair that the junior people would work all the 4:00 to 12:00, the back turns, when they had worked in the offices.

Q Was he junior or senior at that time?

[28.85] A He was junior at that time. I made arrangements that the back turns where they needed Painters would be divided equally amongst all the Painters.

Q And then did he come back to you at some later time with a complaint?

A At a later time Monroe Jones came back to me and made a complaint that he felt the senior people should not be working the back turns, that this should be done by the junior people.

Q Was he senior or junior at that point?

A He was senior.

Q What did you tell him?

A I told him I wasn't going to change the position. They will be rotated.

Q What was Mr. Jones' reaction to that?

A He was very bitter about it.

* * * *

[28.88] Q P-710 is the next exhibit there. Do you know anything about the circumstances when this grievance was filed?

[28.89] A Yes. I was in the office when Mr. London come in after this incident. And he told Mr. Brown what happened where he alleged that a Mr. Taylor called him a black bastard or something to that effect.

Q Mr. Brown, is that James Brown?

A Jim Brown, yes, Chairman of the Grievance Committee.

Q What was the company's rule at that time about first offense fighting in the plant?

A The first offense at Lukens at that time was a four-day suspension. The second offense was discharge.

Q Do you know whether the company's practice was uniform in giving four days to people where they were involved in fights and other employees complaining?

A Of my knowledge being a Grievance Man, they were.

Q Did the union on any occasion go to arbitration over a four-day suspension for fighting?

A Not to my knowledge, no.

Q In your presence did Mr. London ask Jim Brown to do anything about the white employee's remark?

A After Mr. London made that complaint to Jim Brown, knowing Jim Brown as I did, Jim Brown did his thing as the Grievance Chairman, he contacted the proper people and see that it would never happen again.

* * * *

[28.93] Q Were you present when Leon Whitfield testified?

A Yes.

Q He testified about the company wanting to create a job called the Super Laborer job. Is that the job described in Union 461?

A Yes.

Q What was the union's position on this issue?

A Well, at that time we tried to, I kind of helped Jim Brown out. I tried to work out an agreement with the incumbents would stay on the job either as Tow Motor or Crane Operator until they retired. Then they would have the Gang Leader do that assignment.

Q So did you keep those people on the Tow Motor from having being forced to work this Super Laborer job?

A Yes.

Q Can you identify Union Exhibit 462?

A Yes.

Q What is that? What is that?

A That is an agreement that Jim Brown, Don Elliott and [28.94] myself worked out with Doug Edwards. I am pretty sure that Tom Scull worded it.

Q Was this agreement ever put into effect?

A No, sir.

Q Why not?

A Well, we had a handshake agreement on there hopefully that Jim would see the rest of the people if they would agree to sign this document.

In the meantime, the supervision was changed in there. Bob Smith became Superintendent of the Refractory Labor and that is when he reneged on this agreement.

Q And what did you do about that?

A We filed a grievance and went to arbitration.

Q Is the grievance and arbitration award on that Union 357?

A Yes.

Q What was the result of the arbitration award?

A The company was upheld.

Q Did you attend the meeting between Mr. Mont[] and Mr. Whitfield which was described in testimony?

A Yes.

Q Where was that meeting held?

A At the Malvern Subdistrict Office.

Q About what size was the room it was held in?

A Oh, 10 by 13, 11 by 14, somewhere around there. [28.95] Q And how many people were present?

A I was there, Jim Brown, Jim Brewer, Leon Whitfield, and I am pretty sure Horsey Zitarelli was there.

Q Bert Howe?

A Bert Howe, yes.

Q Were you present when Mr. Mont[] walked into the room?

A Yes.

Q For the record, could you describe Mr. Mont['s] voice?

A It is a heavy voice, a loud voice, big like he is.

Q Is it possible that he could have said something inside that room you didn't hear?

A I don't think that is possible.

Q Did you hear him say anything like, "If this matter has anything to do with civil rights, I can't hear it?"

A No.

* * * *

[28.106] Q What years was Donald Book a Committeeman?

A I am pretty sure he was elected Grievance Man in '62.

Q How long did he serve?

A Two years.

* * * *

[28.107] Q Does the secretary of the union maintain a looseleaf notebook with a list of grievances in it?

A Yes.

Q Is Union 692 some sample pages from that notebook?

A Yes.

Q Did you have occasion to use that index from time to time?

A Yes.

Q Is it possible from that index to locate all of the grievances on any given subject?

A No, no. They are filed in numbers, by numbers.

Q For instance, a grievance on testing, would that necessarily show up for the subject designation, the testing?

A No.

* * * *

[28.154] THELMA VAUGHN, sworn.

DIRECT EXAMINATION

BY MS. GARTRELL:

[28.155] Q Mrs. Vaughn, are you the widow of Clarence Vaughn?

A Yes, I am.

Q I have placed in front of you two documents, Union 387 and Union 388 which I am showing you be-

cause at the bottom right hand side of each document at Page 1 appears your husband's signature over the line President, Local 1165.

Was your husband ever President of Local 1165?

A My husband was never a duly elected President of Local 1165 at no time.

Q He was elected as Vice President?

A Vice President and served in the absence of the President.

Q Whenever the President was sick or for some reason gone?

A That is right.

Q Are you certain of that?

A I am very certain of that.

Q Were you aware of your husband's union activities in the 1940's?

A Very much aware. In fact, Local 1165 almost began in my house—in our house.

Q Were in fact meetings of the organizers—

A That is right.

Q —held in your house?

A They were.

* * * *

[28.157] Q When the union was just getting organized at Lukens, did the Steelworkers' Organizing Committee promise black employees in Lukens that if they became organized and established as a union they would work for equal job opportunity for black employees?

A Yes, they do.

* * * *

[28.158] Q What year did your husband leave Lukens?

A My husband left Lukens with a heart attack, I will say possibly in '60 or maybe the latter part of '59, the first heart attack. That wasn't a permanent leave though because he went back to Lukens the second time.

Q And when did he permanently leave?

A I think he permanently left in '63.

Q At the time that he last left Lukens, did he express to you whether he had any opinion about whether Local 1165 had discriminated against its black members in its representation of them?

MR. SILBERMAN: Objection, Your Honor.

THE COURT: Objection sustained. It seems to me that is pretty clearly hearsay in violation of the dead man's rule besides.

MS. GARTRELL: He was at that time, Your Honor, a union official. I believe it would be an admission.

THE COURT: I am sorry. What was he at that [28.159] time? Was he a Vice President then?

THE WITNESS: At that time he had, in my insistence he had resigned the second time around as any kind of status in the union. He had to quit because it was a heart condition.

BY MS. GARTRELL:

Q Before he quit the union, did he express to you an opinion as to whether Local 1165 had failed to keep that promise originally made by the Steelworkers' Organizing Committee to work for equal job opportunity?

MR. SILBERMAN: I object.

THE COURT: Overruled.

MR. SILBERMAN: Mr. Vaughn's personal opinion could not be relevant even if alive. We were entitled to have this witness designated so we could take proper discovery.

THE COURT: Overruled.

MS. GARTRELL: I did not know Mrs. Vaughn during the discovery period.

THE COURT: Whose fault is that? I don't think we have an answer to the question.

THE WITNESS: Rephrase it.

MS. GARTRELL: Read the question back.

(The last question was read aloud by the court reporter.)

[28.160] THE WITNESS: Gradually Local Union 1165 began to back off from even some of the contractual

agreements that had been made and for this, because it upset my husband very much, gave him high blood pressure and also eventually according to even the Lukens' doctor who at that time was Dr. Stone, told my husband that he was foolish.

THE COURT: We are not so much concerned why your husband quit but the question is: Did he feel—

THE WITNESS: Yes, he did.

THE COURT: —the union failed to live up to its agreement?

THE WITNESS: Yes, he did.

* * * *

[28.160] CROSS-EXAMINATION

BY MR. SILBERMAN:

Q Mrs. Vaughn, your husband served as Vice President under William Taylor; is that right?

A That is right.

Q And this was during World War II; is that correct?

A Well, it could have been—look, let me make something perfectly clear, maybe you can understand it. I at that [28.161] time was a young woman. I was the wife of a black Steelworker who only knew when things were tough because the reaction and the stress and the pain was felt at home.

Now I know some of these fellows. For instance, the man who is sitting over there. I knew his brother when he was in the union but I don't have any recollection of him because I was not a union member.

Q I understand. You do recall your husband serving under William Taylor. You have established that.

A Yes.

Q Do you recall the spring of 1946, Mr. Taylor became a Foreman and resigned from the union?

A Yes, long before that Mr. Taylor was a very sickly man. So my husband filled in a lot of times for him.

Q And after he resigned from the union your husband became a permanent President until there was a new election; is that right?

A I can't say how many weeks there are because Mr. Taylor tried to last the term out until there would be an election by Local 1165. So if he did it was a matter of weeks.

Q Let me show you a document I will mark as Union 1001 and see if this helps refresh your recollection. This is the employment record card of William Taylor and you see it shows he became Assistant Pit Foreman March 1, 1946. You see, [28.162] looking at Union 387 and 388, your husband signed the grievance as President in August of 1946.

Does that refresh your recollection for about a six-month period your husband served continually as President of Local 1165?

A If my husband served at that time for that period of time, I had no way of knowing. He never at any time expressed to me that "I am now the permanent President of Local 1165."

* * * *

[28.169] DONALD W. SMITH, sworn.

DIRECT EXAMINATION

BY MS. GARTRELL:

Q You are now employed at Lukens Steel Company; is that [28.170] right, Mr. Smith?

A Yes, I am.

Q And what job?

A I am a Test Processor right now in the Metallurgical Test Department.

Q How long have you been in the Metallurgical Test Department?

A I was laid off at one point. I have been there now approximately seven years I think, in that department.

Q How long have you been physically assigned to the area that you are in, the Test Lab; is that right? You are in the Test Lab?

A I have been there since 1978, the summer of '78, July 8th, I think, something like that.

Q Prior to that where were you located in terms of the exact physical location of your job?

A I worked in By-Products Department from I believe 1973 to 1978, approximately five years.

Q During those five years were you a Shop Steward?

A Yes. I was Assistant Committeeman at one time and after that I was Shop Steward for the remainder of my time there.

Q In early 1978 did you become aware that the company was attempting to fire a black employee named Alfred Hicks who worked in By-Products?

[28.171] MR. FEIRSON: Objection. Leading question.

THE COURT: Overruled.

THE WITNESS: That was in the summer of 1978, Alfred Hicks.

BY MS. GARTRELL:

Q And you became aware when it was happening?

A Yes, I did.

Q Why was the company trying to fire Mr. Hicks?

MR. FEIRSON: Objection, no foundation.

THE COURT: What is your understanding of the reason?

BY MS. GARTRELL:

Q What did the company say was the reason they were going to fire Mr. Hicks?

A Mr. Hicks allegedly committed an act of violence towards Superintendent Sam Miller.

Q They said he hit him, right; is that right?

A Yes, yes.

THE COURT: Try to avoid leading the witness. This is not an adverse witness.

BY MS. GARTRELL:

Q Did there come a time when you believed that Mr. Hicks' race had some relationship to the company's attempt to fire him?

MR. FEIRSON: Objection.

[28.172] THE COURT: Objection overruled.

THE WITNESS: I believed that from the beginning of the incident and before in the By-Products Department.

BY MS. GARTRELL:

Q Why did you believe that?

A Because of the on-going incidents that came to my attention almost after I found out, after a while, weekly possibly, sometimes after a while daily basis of the assignment of the personnel within the department.

Q What were the kinds of incidents in By-Products that had come to your attention on a weekly or even daily basis?

A The assignment of the jobs themselves. By-Products is a job shop. The Foremen assign you to work. I think I would have to explain pretty much what the whole set up was of By-Products when I went there in 1973 until 1977. There was no posted schedule. The scheduling was kept in a drawer by the Turn Foreman. There was no posted schedule out in the shop. There was no posting for job opportunities within the department, subdivision positions. In turn the Foreman came out with the scheduling at the end of the week and told the men verbally where they would report to work on the following Monday.

In this nature, once they reported to work on Monday they were then assigned by the Turn Foreman once [28.173] again to the different type of job that may be

running at that particular time. Then when I became aware of the situation—

Q Did you get complaints from black employees who were given job assignments in By-Products in the fashion that you described?

A Yes, because they were aware—the newer employees coming in were aware of their seniority and the fact it first came to my attention, I assumed it was a seniority fact. After a while again I did believe that it went beyond the seniority factor because of the fact that the number of people that were coming to me were the black race.

Q So did you in your own mind come to believe that it was not just a seniority problem but was a racial problem?

A My opinion, yes, it was a racial problem.

Q Now, after Mr. Hicks was fired there was a protest by some of the employees in By-Products; is that right?

A Yes.

Q Will you look at what has been marked as P-1366 and tell me if this is a news article written about the picketing protest which followed the discharge of Mr. Hicks?

A Yes. Yes, I am aware of this.

Q And did you also put together a petition which was addressed to the management of Lukens Steel Company and which you solicited signatures for?

A Yes.

[28.174] Q Is P-1326 the petition that you drafted?

A Yes.

Q When did you draft this petition?

A I drafted this petition the week following Mr. Hicks' firing, the incident.

Q The line which is numbered 4 here, which is concerning management's continuous efforts to create social and racial differences among the hourly employees. Does that line refer to the discharge of Mr. Hicks and to the

scheduling problems that you have already testified about?

MR. LANDIS: Your Honor, I realize that in other instances I have risen to no avail but as to this, I think it is clearly not rebuttal as any of the non-rebuttal evidence that has been offered. And so I would object to it strenuously on the ground that it should have been presented as part of the case in chief and is no part of the case at this time.

THE COURT: Objection overruled.

MR. LANDIS: May I have a continuing objection?

THE COURT: Yes. Avoid leading the witness.

BY MS. GARTRELL:

Q Tell us what number 4 refers to?

A I was trying as nicely as possible to get their attention about the situation. It was an on-going situation [28.175] in the By-Products area. The Turn Foreman assigned personnel to the jobs avoiding the seniority rights and the man had already previously worked on the job operated positions. I contended when you are operating on the job and the Foreman comes by and replaces you with a white employee who has less seniority and less ability on the job, I think that just might cause a little conflict between the men and not in the best interests of the job itself.

Q And had that incident that you described happened in By-Products?

A That incident occurred frequently in By-Products.

Q The document which is marked P-1326 does not bear a date. Can you tell me if the document marked P-1367 relates to P-1326?

A Yes. I took the initiative to send this document by certified mail, three copies, one to George Copeland, Area Superintendent I believe at that time, one to J. L. Pflasterer, he was whatever he was, and William Mullin-

stein. Pflasterer was the Chairman of the Board, I think.

THE COURT: All Lukens' officials?

THE WITNESS: Yes.

BY MS. GARTRELL:

Q And the employees who signed P-1326, were all of those employees located in By-Products?

A Yes, all of those employees were.

[28.176] Q How many signed?

A I went to the seniority listing and found that there was—appeared to be 110 active employees in By-Products in that week. I achieved to get 92 employees to sign the document and I went—I feel I went a little bit out of my way just to explain what this document was all about.

THE COURT: You got 92 of them. Wait for the next question.

BY MS. GARTRELL:

Q And that 92 was both black and white employees?

A Yes, yes.

Q Now, what happened after this petition was sent off? Did you send this to Tom Ryan?

A That week or the—the following week at the union meeting I presented the petition at the time to President Pilotti and asked him if he would present it to Tom Ryan. And the following day I sent three other copies without his knowledge, certified mail, to these officials.

Q Do you know if Tom Ryan ever got the original of the petition?

A I do not know that. I assumed he did.

Q Now, what response did you get from management as a result of your sending in this petition?

A My personal response or—

Q Response by the company.

[28.177] A There was a follow-up meeting was called I was told.

Q Were there in fact two meetings?

A Yes, two meetings.

Q Is P-1369 the notes that you had made indicating the people who attended those two meetings?

A Yes.

Q I notice you have follow-up July 27, 1977. Is that an error and did you mean 1978?

A Yes.

Q And the first meeting was held on July 13, 1978?

A Yes.

Q At either one of those meetings did anybody on behalf of the company address the point in your petition concerning the efforts of management to create racial differences among employees?

A On whose behalf?

Q The number 4, Point 4 of your petition. Did anybody on the company's behalf address that issue in either one of these two meetings?

A Not to my recollection.

Q Did you have any discussion with any of the union representatives as to whether you ought to bring up the matter of Mr. Hicks' discharge at either of those two meetings?

A It was felt at the time I discussed it with Benny Pilotti, I know for a fact I discussed it with "Yi" Brown. [28.178] "Yi" in particular, I remember he felt this thing—he wasn't exactly in favor of the petition. He felt it wasn't really in Mr. Hicks' favor, which I didn't go along with that.

Q What was the nature of your disagreement with him on that?

A I was fully aware what happened to Mr. Hicks. I couldn't see why this type of thing couldn't help Mr. Hicks who I know was innocent, what was alleged.

Q By innocent you know he did not in fact hit his Foreman?

A Yes.

Q Were there a number of employees who were eyewitnesses to verify that he in fact had not hit his Foreman?

A When I heard—the incident occurred, I went over—there were six men on the crew. I went over and talked to the fellows to find out what happened. From there I went down to the office to talk to Sam Miller. I talked to Sam Miller—all six of the people didn't say—yes, there was an argument. They didn't see any act of physical aggression. I went down to talk to Sam Miller. He was upset about what had occurred. He said that he had felt he was under the threat of violence. It meant to me, which I was in there approximately a half hour listening to him, that Mr. Hicks had actually put his hands on him at any time.

Q Did you think that Mr. Hicks' grievance, the one that [28.179] went through the arbitration process, do you think his grievance ought to mention he was fired because of his race?

MR. SILBERMAN: Objection, Your Honor. Mr. Smith's personal opinion is not relevant at this proceeding.

THE COURT: Overruled.

THE WITNESS: Was that overruled?

THE COURT: Yes, go ahead.

BY MS. GARTRELL:

Q You may answer.

A Yes, yes. That is what I felt.

Q Did both Mr. Pilotti and Mr. Brown disagree with you on that?

A At that time.

Q Did they ever explain to your satisfaction their reasons for that disagreement?

MR. SILBERMAN: Your Honor, in addition to my previously stated objection, I object on the grounds we had not been given notice he would testify. The designa-

tion of his testimony of the dissatisfaction with the union, complaints about the union.

THE COURT: Objection overruled.

THE WITNESS: I felt at the time that was their opinion, the petition on Mr. Hicks' behalf was not proper, wouldn't help the situation.

BY MS. GARTRELL:

[28.180] Q To mention race?

A Yes.

Q Is P-1328 the arbitration award as to the incident involving Alfred Hicks, the same Alfred Hicks you and I have just been discussing?

A Yes, it was.

Q And he got his job back without back pay; is that correct?

A He got his job back after four months.

Q He lost four months' pay?

A Yes.

* * * *

[28.181] Q What is [P-1368], Mr. Smith?

A That is a list, of some of the people that I took notes for my own interest of the situations that were frequently occurring involving job postings and honoring of these postings.

Q Are these names of black employees whom you felt should have gotten jobs and who did not?

MR. LANDIS: I will object.

THE COURT: Objection overruled.

MR. LANDIS: Grossly leading.

THE COURT: Objection sustained.

MS. GARTRELL: I am perhaps hopelessly [28.182] trying to wrap up too quickly.

BY THE COURT:

Q When did you make these notes?

A This is a recent copy. I have another older copy of the same.

Q This is a copy of something you made earlier. When did you make the original?

A At the on-going time, approximately about the same time Mr. Hicks—

Q Are all these persons named, listed here, are they all black?

A No, one, two, three—the five top names are. And there is another individual that I know exactly.

BY MS. GARTRELL:

Q Another black employee?

A Yes.

Q What is his name?

A Steve Miller.

* * * *

[28.183] Q Mr. Smith, you still have in front of you P-1368. Why did you write the names of those black employees listed at the top of that page, those five black employees?

A I wrote those names because they stuck in my mind, the particular instance—these individuals came to me first.

THE COURT: You felt they were individuals who are just claims for mistreatment on racial grounds; is that right?

THE WITNESS: Yes.

* * * *

[28.185] Q How were job vacancies filled in By-Products when you were there?

A When I went out there in 1973, I think they were filled by word of mouth because there wasn't any job postings, subdivisional postings. That I was aware of. I don't know how they were filled. It was not until approximately 1977 through my efforts as a Committeeman in that area were jobs posted out in the department itself where the men were aware that certain jobs were available, operators.

Q During the times when there were no postings, how is it determined that an employee got a job that was vacant?

A I believe it was by word of mouth through the shop that there was a vacancy available.

Q Who picked the employee?

A The Foreman.

* * * *

[29.43] [CROSS-EXAMINATION]

Q Mr. Smith, am I correct in saying that the jobs in By-Products, they are now posted when the opening comes up?

A Yes, they are now posted, to my knowledge.

Q And the weekly schedules are now posted; is that right?

A Yes, it is. I still don't know if they have the positions posted on their schedules but they do have a weekly schedule.

Q Was that something that you and Ray Gardner were able to work out with supervision?

A Yes, they—

Q Who is Ray Gardner?

A Ray Gardner is the Committeeman in Zone 1.

Q What is your opinion of the job he does as a Committeeman?

A My opinion of Ray Gardner is very high. Ray Gardner is a good union man, a good man period.

Q Now, take a look at Plaintiffs' 1368, if you will, the [29.44] list of names.

A 1368.

Q Am I right in understanding these are employees that came to you with complaints?

A Yes.

Q They came to you as Shop Steward?

A Yes.

Q And what did you do when these employees came to you as Shop Steward?

A I in turn talked to the Turn Foreman to try to find out the explanation. It was usually after the shift had started in all of these incidents, except Alvin Jones, that is a separate case. They had signed for a posting of different jobs, operating jobs and they wanted to know why they weren't being assigned as the Learner on the job.

Q In each case were you or Ray Gardner ultimately able to resolve the problem that had been brought to you?

A I was not successful. I in turn had to turn it over to Ray Gardner.

Q To your knowledge, was he able to resolve these problems?

A Yes, yes.

Q Am I right in saying that these aren't the only employees in By-Products who had problems of these sorts?

A You are correct.

[29.45] Q Most of the employees had problems at one time or another of this sort; is that right?

A Well, yes, yes. It was quite a bit of problems in By-Products as far as job assignment and who was to fill these assignments.

Q Now, in the Alfred Hicks grievance, the union was arguing that case, Mr. Hicks had not in fact grabbed Mr. Miller; is that right?

A To my knowledge, yes.

Q In your view that was the correct argument to be making, wasn't it?

A Yes, yes.

Q Was Ray Gardner the Committeeman the time that grievance arose?

A Yes.

Q Did you attend the Fourth Step hearing on that grievance?

A No, I did not.

Q Did you attend the arbitration on that grievance?

A No, I did not.

Q Did you talk to Mr. Gardner about what arguments the union would or should be making in that grievance?

A Yes.

Q Now, when Mr. James Brown told you that he thought the petition you were circulating would not be helpful, did you [29.46] think that Mr. Brown was interested in discriminating or hurting Mr. Hicks in any way?

A No. I didn't think of it in that vein.

Q This was just an honest disagreement opinion as to what were the best tactics to use?

A Yes.

Q Would I be correct in saying Mr. Brown was more experienced than you in terms of what works and doesn't work in arbitration cases?

A Not my opinion—rephrase that.

Q Let me ask you: How many arbitrations had you attended as of—

A Maybe three or maybe four. I know of two, possibly another I have attended for my own interest.

Q And for how long were you an Assistant Committeeman?

A Six months, maybe four—four to six months.

Q Did you ever have a chance to attend the Third Step meeting?

A No.

Q How about a Fourth Step meeting? Have you ever had a chance to attend one of those?

A No Fourth Steps. Third Step possibly. I believe I was in with Jim Brown, two times that I recall talking to Sam Miller. So I assume—I believe it was Third Step. I know I had called Jim down and he had come down to By-Products [29.47] while I was the Assistant because of the nature of the Committeeman who was off indefinitely sick and I felt I needed help and at the time I was new.

* * * *

[29.49] [REDIRECT EXAMINATION]

Q Mr. Smith, did you express to union representatives the view as to any other black employee besides Mr. Hicks, the view that the race of the employee had something to do with what was happening to him and that his race should therefore be mentioned in dealings with the company over that employee situation?

MR. SILBERMAN: Objected to as leading.

THE COURT: Overruled.

THE WITNESS: After a period of time in dealing with the individuals.

THE COURT: Just answer the question.

THE WITNESS: Yes, yes, race was a definite factor.

THE COURT: How many times, approximately?

THE WITNESS: Well, seven people's names I can recall specific instances.

THE COURT: All of those seven you expressed the view you thought race was a factor and should be mentioned?

THE WITNESS: No, no, maybe in two—let me see, three of the seven.

THE COURT: Three of them you thought race was a factor. You said that and you urged the union to include [29.50] that in the grievance?

THE WITNESS: I didn't urge them. I felt it could or should—it could have been considered in the grievance if it was so desired to be handled that way.

BY MS. GARTRELL:

Q Did the union agree or disagree with you in those instances?

A Well, I don't believe the grievances were handled on the basis of racial aspect to my knowledge. They were handled on the basis of seniority aspect and the opportunity—let me think now—can't deny the man the opportunity to learn the job.

THE COURT: Do you agree that if you have a clear-cut contract violation that doesn't add anything to add racial discrimination?

THE WITNESS: Pardon?

THE COURT: Do you agree with the position that if you have a fairly clear case of a contract violation involving a grievance that it doesn't add anything to add racial discrimination as well?

THE WITNESS: At that time I did. It seemed to be accepted policy in accomplishing what we wanted to accomplish.

THE COURT: Thank you.

* * * *

[29.154] JAMES BREWER, sworn.

DIRECT EXAMINATION

BY MR. BORISH:

Q Mr. Brewer, by whom are you employed?
A Lukens Steel Company.
Q When—
A 4th day of January, 1951.
Q What is your current position?
A Truck driver, Motor Truck.
Q You are in the Motor Truck Sub-unit?
A That is correct.
Q When did you become a truck driver at Lukens?
A 1969.

* * * *

[29.161] Q What have you observed written on the walls?

A There are a lot of things pertaining to blacks, a lot of different wording pertaining to blacks written on the walls of the bathroom.

THE COURT: Let's not just generalize like that. What time intervals and does the same stuff remain up for any appreciable length of time? When did all this happen?

MR. BORISH: That is coming.
THE COURT: Hurry up.

BY MR. BORISH:

Q When was the last time you had occasion to observe this?

A Monday I was in the bathroom there.

Q Is this something that you just noticed recently or over what period of time have you noticed this?

A Since I have been employed by Lukens Steel Company it has been there.

Q Has it gotten worse or less or stayed the same?

A Just about the same. I would say it is all over.

Q Are you aware of any efforts that the company has made to stop this?

A Yes. About a month ago they did post some literature [29.162] in the clock station and they said this was against Lukens' policy to have these words and different things about blacks. If someone was caught on it they would be disciplined, action would be taken.

Q Before that notice a month ago, were you aware of any efforts by the company to stop this practice?

A I have never seen it posted in the mill.

MR. BORISH: I have nothing further.

THE COURT: Is that generally throughout all the washrooms that you visit or more likely to happen in particular washrooms?

THE WITNESS: It is all over Lukens Steel Company, all over.

THE COURT: Racial epithets on the wall?

THE WITNESS: Yes, sir, Your Honor.

* * * *

[29.164] [CROSS-EXAMINATION]

Q Now, with regard to this graffitti on the bathroom walls, are other things written on the bathroom walls?

A There are a lot of things, mostly pertaining to

blacks, though, what you are reading there. It is not in one washroom. It is all over.

Q Just stuff pertaining to blacks, nothing else?

A No, I didn't say that. I said it is a lot of other things in there, too.

Q Is this graffitti periodically cleaned off?

[29.165] A At times they get someone to repaint it. It is right back up there, I would say, in no time because once you go in—you go in a stall and you close the doors but when you write in there no one can see it. You can't really tell who is doing it.

* * * *

[29.198] JOEL C. KENNEDY, sworn.

DIRECT EXAMINATION

BY MS. GARTRELL:

Q Mr. Kennedy, how long have you been employed at Lukens?

A Since 1956, September 6th.

Q What is your present job?

A Torch Operator in the Strand Cast Department.

* * * *

[29.199] Q Did you apply for the Strand Cast Subdivision when it [29.200] was first opened?

A Yes.

Q Were you approved or disapproved initially?

A I don't know whether I was approved or disapproved. I have never heard it answered. We was never called. I will place it that way. When we tried out why we never got an answer.

Q You never got any answers as to why you were not moved in initially?

MR. LANDIS: Your Honor, I will object to this. This is surely not rebuttal. The designation of the witness says rebuttal to Eugene Lopp and Don Matthews, Joel Kennedy five to ten minutes.

THE COURT: Stretching it beyond ten minutes—

MS. GARTRELL: It will not be beyond ten minutes.
MR. LANDIS: Not rebuttal.

BY MS. GARTRELL:

Q Did Don Matthews ever indicate you or tell you why you did not go into Strand Cast?

A Don Matthews made a statement one time. He never told me direct. He made a statement one time to four employees, one of them was myself that he wasn't going to be a fool and let his best workers go.

[29.201] Q Did you eventually get into Strand Cast?

A Yes, after they had chosen everybody else and they still had openings, then they decided to call us. That was through the work of [Carl] Cannon and Richard Jacks[] and a few other union officials.

* * * *

[29.202] Are you in your rightful place on the seniority list in Strand Cast?

A No, I am not.

Q Have you ever grieved to get in the right place?

A It was our understanding when we got to the Strand [29.203] Cast Department that we couldn't grieve on anything for 180 days after we got there. And we accepted this not knowing that we should have grieved right after we got there.

* * * *

CROSS-EXAMINATION

BY MR. LANDIS:

Q This rightful place business, you went in at the same time that Mr. Middleton did, did you?

A Yes.

Q And Mr. Cannon, was it?

A Mr. Who?

Q Mr. Cannon?

A No.

Q So you went in with Mr. Middleton. Who were the others you went in at that time?

A Mr. Middleton, Mr. Tucker, Mr. Davis, Mr. Sill, S-i-l-l, and myself.

Q And all of you went in at the same time; is that so?

A Yes.

Q So as far as your rightful place in the Strand Cast unit, you were in the same place as those employees who went in at the same time; is that right?

A Yes.

* * * *

[29.206] BY MS. CLARK:

Q Mr. Middleton was a Shop Steward in Hot Tops at the time the Strand Cast controversy was going on?

A Yes.

Q And as your Shop Steward did you understand that he was in contact with management and with union officials about what could be done to try to get you all into Strand Cast?

A Yes.

Q Was it Mr. Middleton who told you that none of you could grieve for 190 days?

THE COURT: 180 days he said.

THE WITNESS: No.

BY MS. CLARK:

Q Who was it that told you about that?

A That is Mr. Pat Palmerella, who was a Trustee, Cannon, Richard Jacks, all of these fellows were Shop Stewards and also James Brown. All of these fellows were officials in the union. They told us we couldn't grieve for 180 days.

Q What was it exactly they told you you couldn't grieve [29.207] about for 180 days?

A The seniority position.

Q Are you sure they didn't tell you it was job description and classification you weren't allowed to grieve about for 180 days?

A No.

Q Is it possible that what they told you was that there was an agreement on job descriptions for 180 days?

A They told us it was an agreement on everything, an agreement made up by the union and officials for the first 16 men who got there.

Q Did you ever see that agreement?

A It wasn't a written agreement. It was a word of mouth agreement.

* * * *

[32.92] THOMAS RYAN, recalled.

DIRECT EXAMINATION

BY MR. LANDIS:

Q Mr. Ryan, back in the summer of 1978, do you remember a protest demonstration that occurred involving people in the Form and Press Products?

A Yes, yes, I do.

Q Did you have some part in dealing with the protest demonstration?

A Yes, I did.

Q Now, will you look at the documents that I gave you there and I will refer you to L-3050. Those are the minutes of the meeting that was held on July 13, 1978; is that right?

A That is correct, sir.

Q Now, before that meeting took place, what was your [32.93] understanding of what brought the whole thing to a head?

A I think the item that brought it to a head was the revision in the incentive standards that the company was contemplating due to the impact of remote control cranes which had been installed in the By-Products Department or Press and Form Department.

Q And what was it that was being contemplated as the result of this new installation?

A There would be a reduction in delay time which the men had been given before which also resulted in a favorable premium opportunity for them.

Q About when was it that this all began to develop?

A Oh, I would say that this started maybe the first of June, it really started to come to a head.

Q As the result of the protest meeting—rather, as the result of the protest demonstration, a meeting was organized with the people present representing the company and then the other people representing the union?

A That is correct, sir.

Q Now, will you just cast your eye over those minutes and tell us how it was that the agenda was arranged for this discussion?

A Well, the agenda was arranged from the petition that had been submitted by the employees. They had, I think, six or seven items. One of the items was as listed in the minutes, [32.94] unjust suspensions and disciplinary actions taken against hourly employees, management impassive concern for hourly employees, and welfare of Lukens and so forth, right on through.

So we used their petition to set the items forth.

Q Does the minutes—do the minutes L-3050 fairly represent what was said in substance about the various items that took place at that meeting on July 13th?

A I believe they do. Our minutes, while they may be set up—initiated by the company, the union usually winds up with a copy of the minutes anyway. But I heard no objection to what was in the minutes.

Q The union representatives were the ones that are set up above there, up in the right hand corner?

A Well, yes, sir. When you say union representatives, there were some officers of the union and there were some employees. There are some employees on that list.

Q Tell us who they were?

A Well, the best of my knowledge, Ben Pilotti, James Brown are officers of the union and Ray Gardner is the Committeeman for that zone that covers By-Products. And I am not sure but I believe Mr. Mayo, Edward Mayo, is a Shop Steward. Cornet Smith, Hicks and Tucker, I believe are employees of the unit.

[32.95] Q Frederick Hicks is Alfred Hicks' brother?

A Yes, sir.

Q Now, following the meeting of July 13th, was there another meeting on July 27th?

A There was.

Q And take a look at L-3050A and say whether or not those minutes reflect what took place in substance at that meeting fairly reflected.

A They do so.

MS. GARTRELL: We do not have a copy of that, Mr. Landis. We did not get 3050A.

MR. LANDIS: You were supposed to have been given a copy of it yesterday when it was—when we got it.

THE COURT: You don't have it?

MS. GARTRELL: We do not have a copy, no, sir.

MR. LANDIS: I beg your pardon. I am sorry. We got it yesterday. I am sorry that it was not given to you.

(Document handed to Ms. Gartrell by Mr. Landis.)

BY MR. LANDIS:

Q Now, I note that Mr. Miller was present at the meeting of July 27th but he wasn't at the meeting of July 13th. Do you remember how that came about?

A He was on vacation at the time of the July 13th [32.96] meeting.

Q In the course of the July 27th meeting did Mr. Miller himself address some of the specifies that were involved about his own handling of the problems there at By-Products?

A Yes, sir, he did.

Q And is that reflected in the minutes?

A That is reflected in the minutes.

Q Following the meeting of July 27th, did the company undertake a series of steps to deal with problems that had arisen there?

A Yes, we did, sir.

Q Will you look at L-3051 and ripple through it and tell us whether that is a series of reports on the various items which arose out of the two conferences of July 13th and July 27th?

A Yes, sir, it is. And it starts with a memo dated August 10, '78. We set up a schedule for the implementation of the request made by the union and the meetings that we held with them.

Q And then it tracks through the various reports dealing with those?

A Yes, sir.

Q Now, in the course of the work that was being done, did you have occasion to write—to follow up on the progress of the work, and I refer you to L-3052? [32.97] A Yes, sir, I did. Most of the problems were within the realm of the operating supervision's ability to adjust. It was my responsibility to see that they did what they were supposed to do and what we said we would do and then this memo of mine dated December 4, '78 showed that there were only a couple of items left that we had not cleared up, that we said we would do for the union.

Q And those were the ones that are referred to in that memorandum to Mr. Fogleman?

A Yes, sir.

Q What about the one that has to do with the Shears personnel? That was your baby, wasn't it?

A That was my problem because it involved the rate paid to the Shear personnel.

Following the initial discussion, which is what, July 13th, I believe, weed out, analyze, take a look again at the Shear rates of pay and he came back and said there isn't anything to adjust. There has been no change.

And consequently there wasn't anything we could do. I wanted to explain that to the Shear crew and to the union, through the union. I tried to do that. I was not successful.

* * * *

[32.98] Q By the early part of 1979, except for the problem that you were talking about in the Shears, which couldn't really be dealt with, was everything wrapped up concerning all the complaints that had arisen out of those two meetings and the petition?

A I certainly believe they were. We never heard anything more from the union about loose ends that had to be cleared up.

* * * *

[32.99] BY MR. SILBERMAN:

Q Mr. Ryan, I believe you referred to something called delay time. Can you explain delay time?

A Not as expertly as I would like.

THE COURT: Which is what we have been experiencing in this trial.

THE WITNESS: Your Honor is probably better than I am.

BY MR. SILBERMAN:

Q My incentive rate hasn't gone down, your Honor.

A When there is delay that the employee is not in control of, he is given an allowance for it.

Q If there was a delay in the time for a crane to come back, a lift, there would be allowance?

A That is right. No penalty for him, that would be an allowance.

Q And the Shears men's complaint was because of the remoting of the crane, there had been a change in the allowance and their incentive pay had gone down?

[32.100] A No. While the remote control cranes had been installed, we kept paying the allowance even though

there may not have been any, they got the allowance in any event.

Now that we had the cranes installed, in our opinion working properly, we were about to revise the standard. This didn't go over so great with the men.

Q Their job class wouldn't be changed, but their take-home pay might be changed?

A It could be, not the job rate.

Q L-3050, minutes of the July 13 meeting, who are the persons listed who are black?

A Mr. Brown, Mr. Hicks, Mr. Mayo and I don't know whether Mr. Tucker is or not.

* * * *

[32.101] Q L-3052 refers to a conversation you had with Jim Brown. Could you elaborate on this conversation?

A Well, as part of my responsibility of the items to be cleared up, from the problems we were having, I was supposed to get after the rate situation, and to do that I had to do it through the union, and so I kept, I guess the word might be hounding Jimmy Brown for a meeting.

He kept avoiding me and finally said let sleeping dogs lie. What I believe he meant by that was we know that the rate, the union knows that the rates are proper and we know that there isn't a thing we can do; there has been no change; we will take it up at negotiations when they come around, which is the proper time to do it.

Q Did you inform Mr. Brown you had had a recheck done on the rates by your expert?

A Yes, sir.

* * * *

[32.102] CROSS-EXAMINATION

BY MS. GARTRELL:

Q How did you wrap or resolve point number four in the petition, Mr. Ryan, which had to do with a claim

that there was a problem with management's continuous effort to create social and racial differences among the hourly employees?

A Well, in that meeting, the union mentioned two specific items. Well, they mentioned A which you see before you, 4A.

Q Which meeting are you referring to?

A July 13. Is that what you asked?

Q You said all of these matters were resolved that had been raised by the petition?

A That is correct.

Q How did you resolve point number four?

A We asked the union what was the problem, and these are the two items we got from them in the meeting of July 13, and if you will note number 4A is a rather indefinite, not a heck of a lot you can do about that—that is something that happened and is gone.

[32.103] Item 4B, the one I have been talking about—excuse me, that is not correct—that appears to be a response from Mr. Miller to the men about their being paid the proper rate.

I wouldn't say it the way it appears that Miller said it, if he said it, but I have a little more experience and I would have said you're being paid the proper rate for the work you are doing.

Q Is that all that was done to resolve point number four as far as you are aware?

A That is correct, that is the only specific items that were mentioned in our meeting.

Q You did not consider point four to be any broader than those two specific items; is that right?

A That is correct.

* * * *

[32.109] MR. SILBERMAN: One further question. When you stated, Mr. Ryan, that you asked the union about certain matters at a meeting, are you referring to the group of employees listed under representing

union, some of them were union officers and some employees?

THE WITNESS: That is correct.

* * * *

[32.141] MICHAEL REACH, recalled.

DIRECT EXAMINATION

* * * *

[32.144] Q Now, let me ask you to take a look at Union-486 which I place in front of you. You signed that agreement; is that correct?

A That is right.

Q Why did the union reach the agreement?

A This concerned the continuous casting operation that was being installed at Lukens at that time. And it was entirely a new operation. The company was not positive as to how it was going to work out, and neither was the union.

So in assigning the men to work on the job, we went along with the company's selection of the men with the understanding that the union or the employees in that area could file grievance at any time retroactive to the start of the agreement.

Q Is this agreement that you wouldn't grieve over job classification right away?

A That is right. We wanted to see the job in operation.

Q You were grievance committee chairman until 1970 when you retired?

[32.145] A That's right.

Q Did the union sign any other agreement other than this one before you, waiving the right or deferring the right to grieve about anything else other than [job classification]?

A Not during the time I was there.

* * * *

[Trial Stipulation Filed in District Court.
Title Omitted in Printing.]

STIPULATION

It is hereby stipulated and agreed among the parties that, if called to testify, John J. Sheehan would testify as follows:

1. I am and since 1965 I have been the Legislative Director of the United Steelworkers of America. Prior to becoming Director I served as a Legislative Representative of the Union in Washington, and in that capacity I participated in the activities of the Union concerning the enactment of Title VII of the Civil Rights Act of 1964.

2. The Union's effort to secure passage of a federal fair employment practices law began long before the bill that eventually became the Civil Rights Act of 1964 was introduced. At the 1960 Democratic and Republican conventions, for example, the Union gave testimony in support of "Program for Civil Rights—1960," a position paper of the Leadership Conference on Civil Rights (of which the Union was a member); that paper, which is Ex. U-684, called for enactment of an FEP law. At the 1962 constitutional convention of the Union, the convention—which is the ultimate policy-making authority in the Union—adopted a resolution committing the Union to supporting the enactment of a federal FEP law; Ex. U-243 contains that resolution and the debate upon it. (In fact, each USWA convention since at least 1950 had endorsed the enactment of a federal FEP law.)

3. The major legislative activity connected with the passage of Title VII came in 1963 and 1964 shortly after the Union had been rebuffed in 1962 by the basic steel

industry in the Union's collective bargaining quest to gain a contractual prohibition of discrimination in hiring and initial assignment. In testimony on July 31, 1963 before the Senate Subcommitee on Employment and Manpower of the Committee on Labor and Public Welfare, the text of which is contained in Def. Ex. U-161, the then-President of the Union, David J. McDonald, spoke of the inability of the Union to prevent such discrimination. Enactment of Title VII, then, was in this particular respect a way to gain by statute rights for employees that could not be won at the bargaining table; and the Union strongly supported the legislation.

4. The Union's efforts in support of the passage of Title VII went far beyond pro forma support. As the contemporaneous documents demonstrate, at several critical stages in the progress of the bill through Congress, the Union committed substantial manpower and time to the effort to enact the bill.

5. At the drafting stage the Union strongly supported the inclusion of an employment discrimination title in the bill. The original Administration bill did not include such a provision, because of a belief that a fair employment bill could not pass Congress. The Administration placed a higher priority on passage of the other titles of the omnibus bill, including public accommodations and voting rights. The Union worked hard to get "a fully enforceable Fair Employment Practices Provision"—i.e., what is now Title VII—made a part of the Civil Rights Bill. Thus, on August 20, 1963, the Union sent out to all District Directors, Staff Representatives, and Local Union Recording Secretaries in the United States the letter that is marked as Def. Ex. U-168 urging all locals to "instruct their members to keep up a steady flow of letters stating the Union's unqualified support" for the inclusion of a fair employment practice title in the civil rights bill.

6. Having contributed to the pressure that got Title VII included in the bill, the Union then worked to ensure that it would not later be dropped from the bill, particularly by those who thought that its inclusion would jeopardize passage of the entire civil rights bill. In this regard, on October 2, 1963, after a subcommittee of the House Judiciary Committee had reported to the full committee a civil rights bill including an FEP title, the Union sent the letter that is marked as Def. Ex. U-169 to all District Directors and Legislative Representatives stating that "it is essential that we give not only acknowledged support but also active support" to the subcommittee bill so that the bill would be "held intact without any dilution." On October 23, 1963 the Executive Board of the Union adopted the resolution that is Ex. U-162 supporting the action of the judiciary subcommittee in incorporating an FEP title into the bill and directing the Union's Legislative Committee and Committee on Civil Rights "to do everything possible" to implement the Union's position that such a bill should be adopted. After the Judiciary Committee reported to the House a bill which included an FEP title, the Legislative Education Committee and the Civil Rights Committee, acting at President McDonald's direction, held a three-day conference in Washington "for the purpose of engaging in active support on Capitol Hill for the legislation"; the directive from President McDonald and the call to the conference are Ex. U-164. In addition, President McDonald sent a letter, Ex. U-163, on November 26, 1963 to all District Directors, staff representatives, and local union presidents, urging the Union's membership to write to their congressmen to ask Congress to stay in session to enact the civil rights bill.

7. At two crucial points in the passage of Title VII and the rest of the Civil Rights Act, the role played by the Union may have been critical to the bill's survival. The first of these came in late 1963 when the House

Rules Committee would not report the bill to the floor of the House. In order to bring the bill up for a vote it was necessary to get 218 Congressmen to sign a discharge petition. The Union contributed considerable manpower and time to the effort to get House members' signatures on the discharge petition. On November 29, 1963, USWA President McDonald directed Legislative Director Frank N. Hoffman to recall the members of the Union Legislative Education Committee to Washington to campaign to have members of Congress sign a discharge petition; the 40-member Committee remained in Washington working for the discharge petition for two weeks. At least two letters, Ex. U-165 and U-166, were sent to all district directors, staff representatives, and local unions during the critical period urging support for the discharge petition. As a result of these efforts, a number of Congressmen pledged to the Union that they would sign the petition.

8. With the help of these efforts of the Union, the discharge campaign was successful, and the bill was reported to the floor of the House, where it was passed. The next crucial stage in the passage of Title VII and the rest of the Civil Rights Act of 1964 came in the Senate. Opponents of the bill launched a filibuster, hoping to repeat the success of previous filibusters against civil rights bills. At least partly as a result of the Union's efforts, cloture was invoked for the first time on a civil rights issue after the filibuster had lasted 57 days. As the cloture vote approached, President McDonald addressed yet another communication to all district directors, staff representatives and local unions urging all members and locals to write to support cloture; the text of this letter is contained in Ex. U-227. Moreover, the Union's Legislative Education Committee was again called back to Washington, this time to lobby for votes in support of the cloture petition. The Union was instrumental in obtaining several votes for cloture which

might well have been lost but for the Union's efforts, as reported in Ex. U-170.

9. Thus, the Union unquestionably played a critical role in securing the enactment of Title VII. Representatives from local unions in Steelworkers District 7 made major contributions to the Union's efforts. During the filibuster in the Senate, the District's Legislative Conference convened in Washington. Representatives from local unions in the District met first to be briefed on the progress of the bill and on how they could help. Then we sent them into the House and Senate offices to speak with their Senators and Congressmen personally and urge support of the bill. Def. Ex. U-171 reflects these efforts. Other districts similarly sent their legislative conferences to Washington to provide support at crucial stages of the legislative battle.

10. Much of the Union's work in support of Title VII was coordinated with the activities of the Leadership Conference on Civil Rights, a coalition of labor, religious, and civil rights organizations. The Union was an active participant in the Leadership Conference, and a major financial contributor. As a Steelworker member of the Leadership Conference I took part in a number of civil rights activities in addition to my work in support of Title VII. For example, I and other members of the Steelworkers' staff marched, together with other Leadership Conference members, in civil rights marches in the South which were taking place before and after the legislative activity regarding Title VII. One of the marches in which I and other Union representatives participated was the famous march with the Reverend Martin Luther King from Selma, Alabama to Montgomery; the report of this march in the USWA newspaper *Steel Labor* has been marked as Def. Ex. U-172. The Union also was well represented at the March on Washington in August, 1963; Ex. U-226 is the *Steel Labor* report of that march. As these facts illustrate, the Union's work in support of

Title VII was only one manifestation of its commitment to civil rights and equal opportunity.

/s/ David M. Silberman
Attorney for Defendant Unions

/s/ William H. Ewing
Attorney for the Plaintiffs

/s/ Robert M. Landis
Attorney for Defendant
Likens Steel Company